UNITED STATES BANKRUPTCY COURT

DISTRICT OF PUERTO RICO

In Re:	)	Docket No. 3:17-BK-3283(LTS)
	)	
	)	Title III
The Financial Oversight and Management Board for Puerto Rico,	)	(Jointly Administered)
as representative of	)	
The Commonwealth of Puerto Rico, *et al.*,	)	June 12, 2019
and	)	
Puerto Rico Electric Power Authority,	)	
Debtors.	)	

In Re:	)	Docket No. 3:17-BK-3566(LTS)
	)	
	)	PROMESA Title III
The Financial Oversight and Management Board for Puerto Rico,	)	(Jointly Administered)
as representative of	)	
Employees Retirement System of the Government of the Commonwealth of Puerto Rico,	)	
Debtor.	)	

In Re:	)	Docket No. 3:17-BK-3567(LTS)
	)	
	)	PROMESA Title III
The Financial Oversight and Management Board for Puerto Rico,	)	(Jointly Administered)
as representative of	)	
Puerto Rico Highways and Transportation Authority,	)	
Debtor.	)	

In Re:	)	Docket No. 3:17-BK-4780(LTS)
	)	
	)	PROMESA Title III
The Financial Oversight and Management Board for Puerto Rico,	)	(Jointly Administered)
as representative of	)	
Puerto Rico Electric Power Authority,	)	
Debtor.	)	

OMNIBUS HEARING

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE

AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For The Commonwealth of Puerto Rico, et al.:	Mr. Martin J. Bienenstock, PHV Mr. Paul Possinger, PHV Ms. Laura Stafford, PHV Mr. Gregg M. Mashberg, Esq.
For the U.S. Trustee Region 21:	Ms. Monsita Lecaroz Arribas, AUST
For Official Committee of Unsecured Creditors:	Mr. Luc A. Despins, PHV
For Puerto Rico Fiscal Agency and Financial Advisory Authority:	Mr. Peter Friedman, PHV
For Financial Guaranty Insurance Company:	Mr. Martin Sosland, PHV Mr. Jason Callen, PHV
For Ad Hoc Group of General Obligation Bondholders:	Mr. Mark T. Stancil, PHV
For Ambac Assurance Corporation:	Ms. Atara Miller, PHV
For Association of the Puerto Rico Judiciary:	Mr. David Indiano Vicic, Esq.
For Ad Hoc Group of Constitutional Debtholders:	Mr. Andrew Kissner, PHV
For Syncora Guarantee:	Mr. Carlos Rodriguez Vidal, Esq.
For Windmar Renewable Energy, Inc., et al.:	Mr. Fernando Agrait Betancourt, Esq.
For National Public Finance Guarantee:	Mr. Robert Berezin, PHV

APPEARANCES, Continued:

For AmeriNational Community Services, LLC:	Mr. Nayuan Zouairabani, Esq.
For U.S. Bank National Association:	Mr. Clark Whitmore, PHV
For Assured Guaranty Corporation and Assured Guaranty Municipal Corporation:	Mr. William Natbony, PHV
For Union de Trabajadores de la Industria Electrica y Riego, Inc.:	Mr. Rolando Emmanuelli Jiminez, Esq.
For Sistema de Retiro de los Empleados de la Autoridad de Energia Electrica:	Ms. Jessica Mendez Colberg, Esq.
For the Official Committee of Retired Employees of the Commonwealth of Puerto Rico:	Mr. Robert Gordon, PHV
For Cortland Capital Market Services, LLC:	Mr. Emil Kleinhaus, PHV
For the Fee Examiner:	Mr. Brady Williamson, Fee Examiner Ms. Katherine Stadler, PHV
Additional speakers:	Mr. Jay Herriman Mr. Carlos Cintron Garcia

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I N D E X

San Juan, Puerto Rico

June 12, 2019

At or about 9:29 AM

* * *

COURTROOM DEPUTY: The United States District Court is now in session. The Honorable Laura Taylor Swain presiding, also sitting, Magistrate Judge Dein. God save the United States of America and this Honorable Court.

THE COURT: Again, good morning. Welcome counsel, parties in interest, and members of the public and press here in San Juan, those observing here and in New York and to the telephonic participants. As always, it is good to be back here.

I would like to note that we are also joined this morning here in San Juan by the District Court Executive and Clerk of Court of the Southern District of New York, Ed Friedland and Ruby Krajick, and also Lisa Ng, who is regularly my courtroom deputy in New York. And we're pleased to be together here. And of course, our own Clerk of Court of the District of Puerto Rico is here as well, Frances Rios de Moran.

I will remind you, and this is my usual speech about devices, but I make it every time because it's a serious speech. So consistent with court and judicial conference policies and the Orders that have been issued, there is to be

no use of any electronic devices in the courtroom to communicate with any person, source, or outside repository of information, nor to record any part of the proceeding. Thus, all electronic devices must be turned off unless you are using a particular device to take notes or to refer to notes or documents already loaded on the device.

All audible signals, including vibration features, must be turned off. And no recording or retransmission of the hearing is permitted by any person, including but not limited to the parties or the press. Anyone who is observed or otherwise found to have been texting, e-mailing or otherwise communicating with a device from the courtroom, whether here or in New York, during the court proceeding, will be subject to sanctions, including but not limited to confiscation of the device and denial of future requests to bring devices into the courtroom.

Our overall timetable today is until noon, and then from 1:00 until 5:00. Now, before we begin our proceedings with the usual status report, I want to observe that my status over the last few days and up through last night and early this morning has included fielding voluminous, substantive last minute filings on issues that could and should have been foreseen and cued up in a more orderly and efficient fashion.

My time, Judge Dein's time and that of court staff has been called upon in ways that are, frankly, highly

inefficient. And I am certain that litigation costs to the estate have been multiplied by the staffing required to churn out pages on short notice. This must not be the norm. In the future, I will expect that matters for an Omni will be briefed in accordance with the Case Management Order, and that any later filings will be limited to requests to adjourn matters to permit orderly briefing and consideration of additional issues, or notices that matters have been resolved consensually. And I will not look kindly on urgent motion practice that could have been avoided by forethought.

One final note in this connection is that status reports and informative filings are not appropriate vehicles for initiating contested matters or requests for court action. And with that, let's begin the status report of the Oversight Board.

Mr. Bienenstock.

MR. BIENENSTOCK: Good morning, Judge Swain.

THE COURT: Good morning.

MR. BIENENSTOCK: Martin Bienenstock of Proskauer Rose for the Oversight Board.

Your Honor identified five topics for the status report and I will take them in order. In terms of the general status and activities of the Oversight Board, PROMESA Section 202 requires that certified budgets be in place by June 30 of each year for the fiscal year beginning July 1.

Therefore, working backwards from June 30, the Oversight Board must proceed, as required by PROMESA sections 201 and 202, to have certified fiscal plans and budgets in place by June 30. Therefore, that has been a major activity the last several months and will continue that way through June 30.

Simultaneously, the Oversight Board has engaged in negotiations with numerous constituencies that will vote on any Commonwealth plan. These negotiations are all very sensitive, constructive and in different stages.

The ones I can report on are as follows: We are pleased to inform the Court this morning that the Oversight Board and the Retiree Committee have formulated a mutual agreement and solution to the treatment of accrued pension benefits in this case. The Oversight Board recently entered into a Plan Support Agreement with the Retiree Committee regarding this agreement, which includes the Retiree Committee's support for a Commonwealth Plan of Adjustment that contains the substance of the agreement we reached. The Retiree Committee announced the agreement by press release earlier this morning.

THE COURT: I saw the report.

MR. BIENENSTOCK: In summary, the total claims provide that -- the total claims and bonus payments prepetition will be reduced by up to 8.5 percent under a Plan

of Adjustment for the Commonwealth. I say up to 8.5 percent because we've agreed to a floor of 1,200 dollars per month, below which no retiree's benefit will be reduced. Those whose total monthly benefit is already under 1,200 a month will not incur any reduction at all.

There will also be a restoration of cut benefits in the years the Commonwealth has a surplus and outperforms the fiscal plan. The agreement also calls for reserve to be funded from budget surpluses in the first eight years following plan confirmation, and segregated for payment of pensions as needed in future deficit years.

The Oversight Board believes this solution achieves needed savings for the Commonwealth while providing greater security for retirees going forward and is an instrumental component of a Plan of Adjustment for the Commonwealth.

I can also announce that the Oversight Board has executed a plan support agreement with the Union, AFSCME, for a new collective bargaining agreement and treatment of claims arising from the existing CBA, which will be rejected; and also engineered a deal and principles with the AFT, American Federation of Teachers, for a similar plan support agreement that remains subject to a member vote taking place today. Both unions have announced these agreements by press release in the last week or two.

The two union deals have special significance. It is

critical that negotiations with unions result in win-win situations. The workers are the backbone of the Commonwealth and must be fairly compensated, while the other components of collective bargaining agreements need to be adjusted to create efficiencies and be sustainable in the 21st century.

Both unions, officers and advisors have been the brightest, most dedicated and most enlightened people you can find. They fiercely advocated their members' rights while recognizing that new collective bargaining agreements need to be affordable and structured for long term. They acted like statesmen and stateswomen, not politicians, and the Board appreciates what they did for their members and for the Commonwealth.

Your Honor, there are two other very significant negotiations in progress. There are several other very significant negotiations in progress, and except for one I will identify, I can only say we hope there will be further announcements such as the ones I've made in coming weeks.

The one additional negotiation I can identify was made public by Syncora in the Joint Status Report dated June 7, 2019, docket number 1294, concerning the PREPA RSA. At page 23 of the status report, Syncora writes it has recently made progress to enable it to become a part to the RSA subject to certain issues. We hope and think those issues will be resolved in the next few days.

Finally, the Oversight Board has continued its investigations into the Commonwealth's cash and cash systems, and has continued urging the powers that be in Washington, D.C., to provide cash and create investment incentives to and for the benefit of the Commonwealth.

Judge Swain, in respect of the anticipated filing dates of the Proposed Commonwealth Disclosure Statement and Plan, I can report the Oversight Board hopes to file them within the next 30 days. The number of moving parts are preventing me from making promises, but 30 days is the current intent.

In respect of the timing and use of mediation in facilitating confirmation of the plan, I can report we have one mediation scheduled in the near term. And the Board will be open to mediation with all groups who ultimately have not agreed in advance to the proposed plan that gets filed.

The Court asks for a response to the GO bondholders assurance certification that clawback actions and the Bond Invalidation Act are contingent, and a clarification of the Oversight Board and Creditors' Committee's positions with respect to ripeness of such litigation.

Before I provide the response, I want to note that the Oversight Board hopes its proposed plan of adjustment will propose settlements of the invalidation actions that may eliminate the need for them or reduce their scope

significantly. In terms of the actions requesting return of principal and interest payments made on invalid debt, those actions had to be filed when they were filed to avoid statute of limitations issues. But as the Creditors' Committee said at the time, they should be stayed until we know which debt, if any, is invalidated.

The invalidation objections are not contingent, but the GO bondholders' motion raises an issue of -- a logistical issue that may bear on how the Court determines to handle these actions. Every holder of debt sought to be invalidated may raise as a defense certain prior issued debt was invalid, therefore -- thereby creating more debt capacity to make subsequent debt valid.

They can raise that defense concerning any defendant regardless of whether the Oversight Board or Creditors' Committee has sought to invalidate the debt raise as a defense. To avoid inconsistent rulings, the invalidation rules should probably be consolidated for trial, and notice should be given to all parties when appropriate about all the debt that may be attacked.

By suggesting this, I want to acknowledge that the invalidation of previous debt may make no difference as to whether other subsequent debt is invalidated, and the Oversight Board takes no position on that contention at present.

Insofar as the update regarding the Oversight Board's plans with respect to the anticipated July 15, 2019, issuance of the First Circuit mandate -- well, prior to July 15, the Board will be requesting the First Circuit and/or the United States Supreme Court to issue a further stay. The United States Department of Justice may also request a stay.

President Trump announced he will propose the existing board members to the Senate, and we believe that should happen any day now and would buttress any of the requests for a stay.

Your Honor, subject to the Court's questions, that is the status report.

THE COURT: Thank you, Mr. Bienenstock.

MR. BIENENSTOCK: Thank you.

THE COURT: I see Mr. Friedman is standing. Mr. Stancil. So let's see. Mr. Stancil, you're closest to the aisle. Thank you.

MR. STANCIL: Good morning, Your Honor.

THE COURT: Good morning.

MR. STANCIL: Mark Stancil for the Ad Hoc GO Group.

I'd like to request the Court's permission to file a short response to the update on the contingency of the claims. Mr. Bienenstock said that the claims against these other bonds are not contingent. He didn't offer any explanation as to how that could be.

Count I of these clawback actions, which are directed to more than just the bond -- the 2012s, 2011s and 2014s that have been formally subject to a claim objection, Count I, for example, on the PBA clawback action, Count I says those bonds are null and void. So either they're null and void or they're not, but just saying it's not a contingent claim objection -- I think we'd like the opportunity to say, explain why it is just as contingent, if not more so, than the position they took when we filed a few months ago.

And also, Mr. Bienenstock suggested that all of the bonds should be given notice and put in consolidation for trial. I would like to say that is precisely what we proposed in April, and they opposed at the time.

I'd like to lay this out for Your Honor, if I could, in maybe five pages. If I could. Would that be acceptable?

THE COURT: Well, what I'd ask you to do, since Mr. Bienenstock responded orally, as I requested him to do given the timing and that we were going to have this Omni, I think a meet and confer and a decision either on a joint statement of the mutual positions or responsive, short statements, please, would be a more orderly way to get the information to me.

And so if you can get that all done by, say, the end of next week, that would be acceptable to the Court.

MR. STANCIL: Thank you, Your Honor. That would be

excellent.

THE COURT: Thank you.

Yes, sir.

MR. GORDON: Good morning, Your Honor. For the record, Robert Gordon of Jenner & Block for the Official Retiree Committee.

THE COURT: Good morning, Mr. Gordon.

MR. GORDON: Good morning, Your Honor. Thank you.

On behalf of the Retiree Committee, I wish to confirm the comments of Mr. Bienenstock and confirm that the Retiree Committee and Oversight Board have entered into a plan support agreement regarding the proposed treatment of the claims of Puerto Rico's retirees who participated in the Government Employee Retirement System, the Teachers Retirement System and the Judiciary Retirement System under a prospective Puerto Rico Plan of Adjustment to be filed and submitted to the Court for consideration.

We believe this Plan Support Agreement is significant, extremely significant in this case, and provides a cornerstone for a plan of adjustment for Puerto Rico, which will enable Puerto Rico to emerge from this Title III process and focus on the brightness of its economic future, rather than the darkness of its current financial predicament.

I realize this is not a Rule 9019 settlement hearing or confirmation hearing, but if I may, knowing this is going

to raise more questions than it answers, I'd like to explain a little to the public, as well as the Court, why and how we arrived at this significant agreement.

To be clear, the Retiree Committee does not believe there is any mandate under the applicable law or the facts of this case for any cutting or modification of pension benefits. However, the Retiree Committee recognizes that others, in good faith, can harbor a different view. And in this regard, the Retiree Committee further recognizes that the Oversight Board has clearly and consistently expressed the viewpoint that pension cuts are necessary to achieve a confirmed plan of adjustment for Puerto Rico.

Against this backdrop, the Retiree Committee has taken the view that its fiduciary duties required it to, in the first instance, engage in negotiations with the Oversight Board and explore a consensual resolution rather than simply decline negotiations, insist on no cuts, and assume the risks of litigating such matters. So the Retiree Committee indeed engaged in extensive and intensive negotiations with the Oversight Board over many, many, many months.

I emphasize that because that hard work by the Retiree Committee's members and professionals and the Oversight Board's members and professionals is work that doesn't get reported in the papers, in the media. It's not visible to the public. But let there be no doubt about the

extremely hard work that was done by both parties to reach this agreement over a long period of time.

And the result of the parties' efforts, Your Honor, is that Plan Support Agreement that we believe is highly favorable in its proposed treatment of retirees. A few highlights, if I may. Mr. Bienenstock has referenced some of them already.

It is important to recognize that the Oversight Board's proposed treatment of pensions under its various iterations of its certified fiscal plan originally contemplated cuts for retirees holding monthly pension benefits of just 1,000 dollars, or just 600 dollars if they also received Social Security. Under the Plan Support Agreement with the Retiree Committee, Social Security benefits will not be subject to a cut at all, and the threshold for cuts has been raised to 1,200 dollars a month, as Mr. Bienenstock has indicated.

This vastly -- this provides vastly greater protection for the most vulnerable retirees in our community. It increases the percentage of retirees who will receive no cut under a plan of adjustment from roughly 25 percent to fully 61 percent of all retirees, and in absolute numbers, it increases the number of protected retirees from 45,000 to approximately 102,000 retirees.

The original proposal in the fiscal plan also

contemplated team progressive pension cuts with some pensioners receiving cuts of approximately 25 percent. Under the Plan Support Agreement, the maximum cut to any pensioner is capped at a maximum of 8.5 percent, reducing the top level cut by roughly two-thirds.

The Plan Support Agreement also reflects a concern regarding the security and assurance of future payments to retirees under the Pay-Go system. I want to emphasize that this was a mutual concern of the Retiree Committee and the Oversight Board. The Retiree Committee suggested a mechanism for creating a pension reserve and has taken the lead in designing that pension reserve mechanism, and the Oversight Board was receptive from the beginning.

Those -- the terms of that pension reserve are included in the term sheet attached to the Plan Support Agreement. Details of it are still being negotiated, to some extent, and will come out in the future. The agreement also protects the monthly medical insurance benefits for all who receive that.

As Mr. Bienenstock referenced, there's also a benefit restoration mechanism. So if the economy of Puerto Rico substantially outperforms projections, there is the opportunity for restoration of pension cuts in any given year in which that overperformance occurs. Also, to give pensioners time to prepare for any possible cuts, there will

be no modification of pensions until at least July 1 of 2020.

THE COURT: You said 2020?

MR. GORDON: 2020, Your Honor. Yes.

THE COURT: Thank you.

MR. GORDON: Your Honor, there's also under negotiation, but -- the concept has been referenced and is still under negotiation, but is referenced in the Plan Support Agreement of the creation of an independent board pursuant to the Plan of Adjustment itself, consisting of retirees elected by retirees to supervise the implementation of pension reserve, the benefit restoration calculation, and payments under the Pay-Go system and general compliance with the Plan terms as they pertain to retirees.

We recognize that some have argued that fully protecting pensions from any cuts is a desirable goal and we agree. And to that end, the Plan Support Agreement that we are discussing today more than doubles the number of retirees receiving no cuts.

And what we have said to parties that might criticize the fact that there are cuts that are contemplated is that if those parties can persuade the Oversight Board, the only entity that can file a plan in this case, to propose a plan with better treatment, we would welcome that. But we do not see a path to such a result, and only a path that involves a very substantial risk of backfiring and resulting in

devastatingly worse treatment of pensions.

We do not take lightly any cuts to pensions. We are not pleased that cuts are contemplated; but we believe that we have acted prudently and consistently with our fiduciary duties to minimize the impact of this case on retirees and have achieved a highly favorable result in light of the circumstances.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Gordon.

And I will call on Mr. Friedman, but I also just want to thank and congratulate all concerned on the progress that has been made so far. All of these proposals and agreements will obviously be subject to litigation and will need to be brought before the Court, and some of them may well be opposed. And the Court will make determinations on them. But having proposals to focus on in aid of moving toward a plan of adjustment is a very significant step indeed, and that step appears to be taken on various fronts. And so again, I thank you for these presentations.

Mr. Friedman.

MR. FRIEDMAN: Good morning, Your Honor. Peter Friedman on behalf of AAFAF and Governor Rossello.

To end the suspense, we will be opposing. And that's probably the last funny thing that can be said about pensions. Look, Your Honor, I think, as you know, over the last two

years, the government has shown a lot of leadership both in Title III, Title VI, working with the Oversight Board, trying to reach creditors consensus. We take the last line -- I think it was the last lines of your CTO opinion seriously about the need for constructiveness, and I think we've demonstrated that over and over again.

But with respect to the two announcements today, we can't support them and feel like we have to oppose them for a variety of reasons. Obviously the pension cut issue strikes at the government's responsibility to protect very vulnerable citizens, and with respect, I think something I hadn't really focused on before, an aspect of the pension agreement creating some independent board, as well as the agreement with the unions to effectively negotiate a new CBA, are things that we believe are even greater intrusions on the protected powers of the government than the CTO motion.

We believe those, simply put, exceed the Oversight Board's powers under Title I, II or III, to engage in those kinds of transactions which severely trounce on the rights of the government to engage in a collective bargaining agreement as the actual employer, to set educational policy as the actual employer of the Commonwealth's teachers, to oversee funds to be apparently put in potentially some kind of trust. Those are core governmental responsibilities and not things that can be taken away from the government in our view. And

as things go forward, we will affirmatively make our case on those points.

With respect to retiree pension cuts, Your Honor, I think what we note is -- the whole history of retirement issues is that pensioners have seen cost of living adjustments and freezes for years. And we're not living in a zero inflation environment. So people have seen, retirees have seen their standard of living erode, and we believe this does so to an even greater extent. And we will, you know, in certain cases deprive people of up to 300 dollars a year. For people living on a fixed income, we think that's meaningful and is going to force choices on people that can be avoided. And can be avoided, I think, given -- particularly if you look at the seven fiscal plans that have been certified over the years.

They show that the government, through the leadership of this Governor, and the economic growth that we've seen here, has enough money not to make these cuts. We think these cuts -- the Commonwealth has been successful in implementing substantial cost saving measures. It's generating sufficient cash flows to pay its Pay-Go obligations. The Commonwealth has assumed those liabilities, and we think it has a moral obligation and capacity to keep paying them. And we're particularly troubled by the idea that pension cuts could be made available to bolster off-island creditor recoveries when

it's not necessary.

The projected surpluses under the most recent fiscal plan has increased to 22 billion dollars. We think that's enough certainly to cover the pension cuts, which I -- the net present value of those cuts is tiny and can easily be covered through choices the Board can make. And we believe, frankly, there is no legal ability to make those cuts in light of Act 106, which created post-petition obligations by the Oversight Board to make those payments.

Your Honor, with respect to -- you know, I think, again, I think the critical issue here is you -- if Mr. Gordon and Mr. Bienenstock said something like 61 percent of pensioners won't have to address cuts, but that leaves, we believe, approximately 55,000 retirees who do. And we think, from a legal and moral and economic perspective, we have the obligation to protect those rights as substantially as possible. And we will do that as this process unfolds.

Again, we are mindful and we will remain mindful of the admonition to be constructive. I think you will hear shortly Ms. McKeen and Proskauer and the Board's PREPA teams work hand in hand. We're continuing to move forward on that, but this is fundamental.

Your Honor, that raises critical issues, and I can't be anything less than candid with you from the front that the Board and -- Your Honor, we are at different positions with

respect to these cuts and CBA. Thank you.

THE COURT: Thank you. And I do appreciate your candor.

Mr. Sosland.

MR. SOSLAND: Good morning, Your Honor.

THE COURT: Good morning.

MR. SOSLAND: Martin Sosland of Butler Snow on behalf of Financial Guaranty Insurance Company.

Not to announce the pension settlement -- we'll review and respond if appropriate in due course, but to just respond to a couple things that Mr. Bienenstock said, and one comment by the Court relating to the fact that matters may need to be brought before the Court and litigated, there are critical issues in these cases, as critical as the Commonwealth-COFINA settlement that the Court previously approved in the case, relating to whether certain funds, revenue streams are property of which covered entity under PROMESA.

Those issues have been teed up in litigation brought by the Oversight Board and the UCC that is being -- for which stays are being sought to that litigation, and that will be addressed before Judge Dein this afternoon.

THE COURT: Yes. That is on the agenda.

MR. SOSLAND: But the point is whenever -- those issues will have to be either litigated or settled before any

plan of adjustment can be confirmed by Your Honor. And that will affect timing.

And we heard in the retiree settlement -- the only comment I'll make about it, issues about what might happen in 2020, and we've seen reports from -- that Ms. Jaresko has stated, that she expects that a plan of adjustment for the Commonwealth will be effective as of January 1, 2020. Only if those issues are resolved by either settlement, as would be the norm, and in a complex restructuring, or by litigation, are those dates possibly at all relevant.

And although we've heard comments about negotiations with constituencies in the cases, and we note the retirement deal and announcements related to PREPA, et cetera, with respect to the entities that have an interest in the revenue streams at interest, there have been either no negotiations since the commencement of these cases or no negotiations under the auspices of the mediator or otherwise in well over a year.

And unless those discussions go forward, or we're litigating full blast before Your Honor, and to whatever extent it's delegated before Judge Dein, then I don't see that anything is going to be going effective in 2020, or perhaps for several years later. And we need to engage in those discussions. Thank you.

THE COURT: Thank you.

And Mr. Bienenstock, I am taking you at your word

that there is desire and willingness to actually engage with parties expected to oppose the plan that you intend to propose.

MR. BIENENSTOCK: Absolutely, Your Honor. I said it in opening. The Court can take me at my word, yes. And Mr. Sosland and I have known each other for many years, having been partners for a long time. We both know how these cases go, as does everyone else in this courtroom. And if there are settlements to be had, we'll do them. Otherwise, we'll tee them up for negotiation as appropriate, but the first, Your Honor, is obviously settlement.

THE COURT: So to take you at your word, by the people -- the people at the door, it will require some action.

MR. BIENENSTOCK: I understand, Your Honor.

Somehow Reorg Research has already informed I said I would plan on filing a plan in three days. I want to clear that up. I said 30 days.

THE COURT: Those digits can be a problem.

MR. BIENENSTOCK: And I will not take this point to discuss Mr. Friedman's unfortunate remarks. We'll do that in due course.

THE COURT: Thank you.

Yes, sir.

MR. RODRIGUEZ VIDAL: Good morning, Your Honor. Carlos Rodriguez Vidal of Goldman Antonetti & Cordova on

behalf of Syncora Guaranty.

THE COURT: Good morning.

MR. RODRIGUEZ VIDAL: Thank you. As noted in the Status Report filed on June 7, 2019, which is docket 1294, and the Amended Joint Status Report that was filed on June 11, which is docket 1334, Syncora and the government parties in the Puerto Rico Electric Power Authority case have recently made significant progress to enable Syncora to become a party to the Restructuring Support Agreement.

Since the filing of the Joint Status Report, Syncora has continued to negotiate with the parties and the other RSA parties, and it is apparent Syncora has reached an agreement in principle with all of the parties to the RSA. This agreement, of course, is subject to some approvals and documentation. And these are underway, and we expect to complete those shortly. Thank you.

THE COURT: Thank you, Mr. Rodriguez Vidal.

Yes, sir.

MR. EMMANUELLI JIMENEZ: Good morning. Rolando Emmanuelli Jimenez on behalf of UTIER. I would like to respond to Mr. Bienenstock's comments on the litigation.

And I would like to inform this Court on June 5th, 2019, UTIER filed a petition for a writ of certiorari, case number 18-1521, requesting the invalidation of all the actions and determinations of the Oversight Board based on solid

Supreme Court case law. This case could be considered in the June 20th conference of the Supreme Court.

The Supreme Court's review is warranted since the Court of Appeals misconstrued the de facto officer doctrine and applied it to an Appointments Clause challenge. The Supreme Court has expressly refused its application with respect to Appointments Clause challenges in *Ryder versus U.S.* --

THE COURT: I understand that that is the argument that you are making to the Supreme Court.

MR. EMMANUELLI JIMENEZ: I understand, yes.

THE COURT: In the petition.

MR. EMMANUELLI JIMENEZ: But I would like to finish, Your Honor, saying UTIER reiterates the seriousness of such determinations on Puerto Rico, which may cause irreparable damages and harmful consequences to the UTIER. Therefore, UTIER believes that this contested matter regarding PREPA's RSA is an unnecessary and burdensome waste of resources of the people of Puerto Rico, since based on its unconstitutionality, UTIER already reserved the right to challenge any and all actions taken by the Oversight Board in the adversary proceeding that's filed at 17-0228, docket 145.

Therefore, we believe that the Oversight Board members hold their position without legal authority. Thus, its previous and future actions are void. Thank you.

THE COURT: Thank you, Mr. Emmanuel Jimenez.

All right. Before we move on to the Fee Examiner's report, I'd like to briefly touch on two additional topics not listed on the Agenda. First, the Court has received and reviewed the urgent motion of the Oversight Board and the UCC for limited relief from the Supplemental Case Management Order seeking to amend certain of the adversary complaints to add additional defendants, adding up to a thousand defendants in any given case.

I am currently working with the Clerk of Court to establish appropriate procedures that would potentially allow for necessary amendments. Nothing should be filed until the Court enters an Order.

And you should understand that in order to ensure reliability and close quality control of the ECF recordkeeping system, the procedures that will be announced are likely to cap the number of additions well below one thousand per case and may utilize related-case designation methodologies for achieving the additions and corrections. So stay tuned, and sit tight until the procedural order is entered.

The Court has also received and reviewed the Joint Status Report filed by Ambac and the Oversight Board in connection with Ambac's motion concerning the application of the automatic stay to the revenues securing PRIFA Rum Tax Bonds, and the Court will be entering an appropriate order

soon. So again, sit tight on the discovery dispute. We already have a briefing schedule and I will be entering an order.

So with that, I would call upon the Fee Examiner's counsel to present the fee-related matters.

Good morning, Ms. Stadler.

MS. STADLER: Good morning, Your Honor. Katherine Stadler of Godfrey & Kahn appearing on behalf of the Fee Examiner, Brady Williamson, who appears here today along with our Puerto Rico counsel, Eyck Lugo.

We have two fee-related matters on the Agenda. The first is the Fifth Interim Fee Period Applications Recommended for Court Approval. We filed our report on June 5th, last Wednesday. I am happy to report that since that filing, we have resolved a group of additional fee applications that were listed on Exhibit B as recommended for deferral but will be moved to Exhibit A for purposes of the entered order -- or the recommended order, I should say.

The listing of recommended applications in the Agenda that the Oversight Board filed earlier this week is the current listing of recommended fee applications. It includes those that have been resolved since the filing of our report last week, and I'm happy --

THE COURT: Ms. Stadler, apparently your voice is not coming through clearly to New York, so if you'd speak more

directly into the microphone, I'd be grateful.

MS. STADLER: Okay. Thank you.

THE COURT: Thank you. That should be better.

MS. STADLER: Okay. As I was saying, the list of the recommended applications on page two and three of the Agenda that the Court has before it for today's Omnibus listing is the recommendation for referral amount. It includes several that have previously been listed on Exhibit B as recommended for deferral, but happily I have resolved and we'll now recommend for approval along with the others.

That application period, as you know, brings us up through January of 2019, which means that some, not all, of the applications that have been recommended for approval today include the rate increase issue that we have discussed at length, both in court and in our documents.

We have worked with all of the interested parties and constituencies to reformulate the Presumption Standards Order, as it relates to rate increases, to further clarify that the purpose of the Order is a burden shifting goal. And that is to put professionals on notice that rate increases above the rate of inflation will be subject to additional scrutiny by the Fee Examiner and will require additional showing by professionals of a market-based reason for the increase.

The professionals understand that these are standards that have to be applied in the context of applications. They

cannot be applied prospectively. And they need to take into consideration the unique circumstances of every single timekeeper for every single professional working on these cases. And that number now, Mr. Williamson informed me yesterday, is over 1,400 individual timekeepers.

So to create a rule that applies uniformly to 1,400 professionals of any category would be counterproductive in our opinion. And so the reformulated Presumptive Standards Motion -- Order seeks to clearly articulate the standards the Fee Examiner will apply, create a threshold for which the burden falls even more heavily on professionals to establish the reasonableness of their fees, but allows flexibility in the application, as is always necessary in any fee review process.

We worked with other interested parties. We went around many, many times with different formulations, and the version that we filed last week with our informative motion is, as I understand it, agreed by all of the interested parties who've been in communication with us.

So I'm happy to answer questions either about fifth interim applications or presumptive standards or anything else on the Court's mind.

THE COURT: Thank you, Ms. Stadler, and thank you for your written submissions. And I have reviewed the Fifth Interim Report and the schedules thereto. I've considered

them carefully, and the Fifth Interim Report, with its recommendations as brought up-to-date by your remarks here, and as reflected in the Agenda, is approved. And I will expect that you'll give me an updated order that will also terminate the resolved motions and bring up to speed the provisions for adjournment of the remaining applications that will be reflected on Exhibit B.

MS. STADLER: Yes. We will submit a proposed order this afternoon. Thank you.

THE COURT: Thank you.

And I'm also grateful for the extensive work that has clearly gone into revisitation of the Presumptive Standards Motion, which is -- well, the informative motion is docket entry number 7214. And I am persuaded that the revised presumptive standards address appropriately the concerns that the Court has raised concerning rate increases, and, therefore, I will enter the Revised Proposed Presumptive Standards Order.

MS. STADLER: Thank you, Your Honor.

THE COURT: Thank you. And thank you for being here.

Mr. Williamson, did you wish to make any remarks yourself?

MR. WILLIAMSON: Your Honor, thank you. Brady Williamson, Fee Examiner. There's really no need to supplement Ms. Stadler's comments on either the fifth interim

recommendations or on the Presumptive Standards Motion.

With respect to the PREPA RSA, which is on the Agenda for later in the day, we may have some comments on that as well because of several specific provisions affecting professional compensation, but I'll defer those to the appropriate point.

THE COURT: Thank you, Mr. Williamson.

And so now we will turn to Agenda item III, which are the uncontested claims objections.

Ms. Stafford. Good morning, Ms. Stafford.

MS. STAFFORD: Good morning, Your Honor.

THE COURT: And before you begin your remarks, I would like to address some issues that arose in the context of contested claim objections that appear to have implications concerning the reliability and credibility of the claims objection process. And I see that last night there was a document filed withdrawing several claims, but I do want to address directly the underlying issues.

MS. STAFFORD: Yes.

THE COURT: So specifically, several of the omnibus claim objections asserted that they were objecting to proofs of claim that were described as quote, exact duplicates. Each of those objections included a declaration of Mr. Herriman of the Alvarez and Marsal firm stating under penalty of perjury that the claims had been reviewed and analyzed in good faith

by people under his supervision. And he concluded that the claims assert the exact same liabilities. But then the motions prompted over a dozen responses that asserted that the claims were not, in fact, exact duplicates.

And my staff and I reviewed several of those proofs of claim and others that were alleged to be duplicates and found that many of them were asserted on behalf of children whose parents or other guardians have asserted claims against the Commonwealth for alleged violations of the Individuals with Disabilities Act and other related issues.

Last night, the objections to many such claims were withdrawn, but I am very troubled by these apparent errors in the identification of objectionable claims. If these claimants, their lawyers, or the Court had not noticed the debtors' mistakes, properly filed claims might have been disallowed, prejudicing the legal rights of allegedly disabled children and their parents or guardians, who are among the most vulnerable people.

That's simply inexcusable, given the responsibilities and the resources of the Oversight Board, and also raises serious issues about the underlying process and whether due care is being taken in the first instance in reviewing claims and putting forward claims objections. And so I would ask you now to give me an overview of the process and any changes in the process that are intended to be made going forward.

And I'll tell you, frankly, that I, at this point, would not be prepared to sign off on final orders without the filing of a certificate as to duplicate or amended claim objections, which certificate would declare that all of the claims have been re-reviewed and they are, in fact, actually duplicate or amended claims, whether or not there has been a response filed to them.

MS. STAFFORD: I completely understand Your Honor's concerns, and we were also concerned by the number of responses filed that asserted that claims identified as exact duplicates were not, in fact, exact duplicates. And after we saw the volume of those responses, we undertook to re-review all of the claims that had been identified as exact duplicates. And in the amended schedules that were filed last night, a number of claims were withdrawn from the objections which were not specifically identified by claimants who responded.

Mr. Herriman, who is here in the courtroom, I will call upon him to give us a bit of information about the process that we went through to re-review all of these claims. And we will make sure that we are reviewing the claims with greater care and certainty going forward.

THE COURT: I am glad to hear that, and I'd be grateful to hear from Mr. Herriman about the process now.

MR. HERRIMAN: Good morning, Your Honor.

THE COURT: Good morning, Mr. Herriman.

MR. HERRIMAN: For the record, Jay Herriman from Alvarez and Marsal.

As Ms. Stafford noted, after receiving those objections, we went back through our processes and realized we had one reviewer who was not following our own processes. And the system typically looked at an exact duplicate claim, meaning someone took it on -- a claim, put it on a copy machine and copied it, and that would be our proof.

In this case, one reviewer, in looking at litigation claims, specifically did not notice certain information had been changed. Literally, some of the time it was the children's initials that had changed, and in some cases we noticed they didn't pick up a change in the case number as well. So we're going back through that review for training, and also reaffirming with all of our reviewers, it literally needs to be a photocopy of the claim before we sign off an exact duplicate.

Also, we're putting additional QC processes in claims to make sure an additional reviewer's spot checking the initial reviewer's work to make sure those things don't slip through again, Your Honor.

THE COURT: Thank you.

So as I said, I will need a certificate with the revised proposed order attesting to the accuracy of the claims

and the objections.

MR. HERRIMAN: Absolutely, Your Honor.

MS. STAFFORD: We'll be happy to provide those, Your Honor.

And with that, would you like any further information about the uncontested claim objections at this time?

THE COURT: I don't believe so. Let me just check.

No. I just -- I had that portfolio issue about the objections, and so having had a response to that portfolio issue, and subject to the filing of the certification, the uncontested claims objections are sustained and the subject claims will be disallowed. I'll enter the Order after the filing of the certification.

MS. STAFFORD: Thank you very much, Your Honor.

THE COURT: Thank you.

Just one moment. All right. And so this brings us now to the contested matters, which are at Agenda item IV, the first of which is the Puerto Rico Funds Motion to Vacate the Appointment of the Official Committee of Unsecured Creditors. We've allowed 20 minutes for the argument on that motion.

Good morning.

MR. CUNNINGHAM: Good morning, Your Honor. John Cunningham of White & Case on behalf of the Puerto Rico Funds.

Your Honor, in the ten minutes that I have, if I could reserve two minutes for rebuttal?

THE COURT: Yes.

MR. CUNNINGHAM: Thank you.

Your Honor, the Puerto Rico Funds based here in San Juan hold over three billion of the ERS bonds. And with respect to our motion, Your Honor, let me make one thing clear right off the bat. The sole relief my client seeks is an order that the Commonwealth UCC cannot be the ERS UCC based on the obvious irreconcilable conflict that such committee members have as fiduciaries to creditors of both estates.

And what is the conflict? It is undisputed, Your Honor, at the behest of the Oversight Board, Commonwealth legislature adopted Joint Resolution 188 and enacted 106, mandating, as of July 2017, the dismantling of ERS, the stripping of its assets, including ERS' stream of employer contributions, and the diversion and siphoning of such assets away from ERS into the Commonwealth's general funds.

All of this unprecedented legislation and actions by the Commonwealth against ERS occurred post petition in total disregard of ERS' automatic stay and without any approval by this Court. Your Honor, this utter destruction and plundering of ERS and its assets by the Commonwealth of course has led to a fight to the death by ERS creditors to recover ERS assets for distribution to ERS creditors in this Title III case. Predictably, the only ERS creditors to wage this fight have been the ERS bondholders.

In the 22 months since the ERS UCC has formed, what has it done? What positions or actions has it taken to fight the Commonwealth to recover ERS assets for the benefit of ERS creditors?

The answer, absolutely nothing. It has sat idly by for almost two years and has not lifted a finger to engage in this fight. And there lies the conflict. The current members of the ERS UCC, being current members of the Commonwealth UCC, are completely incapable of taking an adverse position against the Commonwealth that could lead to assets coming out of the Commonwealth and back into ERS.

So how did we get this committee in the first place, which is comprised, again, solely of the Commonwealth UCC members? Well, the United States Trustee finally answered this question in its objection to our motion. It states that it solicited creditors of ERS for interest in serving on a committee.

And then on page ten, the United States Trustee admits, quote, No ERS unsecured creditors had been willing to serve on a committee. So rather than have no ERS UCC, the United States Trustee decided to appoint the Commonwealth UCC as the ERS UCC, irrespective of the conflict.

The United States Trustee, in the objection, says it's not clear that the ERS unsecured creditors would be better off with no representation by the committee. Your

Honor, that's wrong. We would rather have, and this estate, I would think, would rather have no UCC than a hopelessly conflicted UCC.

THE COURT: I'd like to go back to that "we would rather have" for a minute.

MR. CUNNINGHAM: Certainly.

THE COURT: You represent a constituency that claims secured creditors status. What gives you standing to complain about who, if anybody, represents unsecured creditors' interests?

And if your concerns regarding the motivations of the UCC are meritorious, why isn't it sufficient for you to offer them for consideration as to the validity and weight of positions actually advanced by the UCC?

MR. CUNNINGHAM: Your Honor, as a creditor, even as a secured creditor, we have standing to seek the relief that we're asking. And you'll hear I've narrowed the relief. We're asking for one specific section, 1102. And that's 1102(a)(4).

And if I can get there, I'll explain that. But we do have standing, because that section says a party in interest can file the motion and relief that we're seeking.

So back to the motion, there has been much briefing back and forth on the powers of this Court to vacate a committee. We cited *Detroit*, similar cases saying you can.

They cited *Caesars*, similar cases saying you can't, but none of those cases are in the First Circuit.

And we would say, Your Honor, we can resolve this debate right now. Congress handed Your Honor the power to fix the ERS UCC members' irreconcilable conflict in section 1102(a)(4) cited at page nine of our motion, and not cited at all by UCC, nor cited, though, the powers referenced by the United States Trustee. 1102(a)(4) was -- what I was just talking about, says, on request of party in interest and as a creditor of ERS, we are a party in interest, and after noticing a hearing, the Court may order the United States Trustee to change the membership of the committee appointed under the subsection if the Court determines the change is necessary to ensure adequate representation of creditors.

Your Honor, both the UCC and the United States Trustee cite the case of *ShoreBank* at 467 B.R. 156, and it provides a very good overview of the history of 1102(a)(4) and how it was added to the Bankruptcy Code in 2005, to make clear this Court has the power to order a change to committee composition to assure adequate representation.

THE COURT: I understand that the Court has the power, and that the power is directed to be used under circumstances where it's necessary to assure adequate representation, which is quite a high standard.

And so I would be grateful if you would, in some of

your remaining time, identify any actions that have been taken by the UCC that you contend are breaches of fiduciary duty to the unsecured creditors of ERS.

MR. CUNNINGHAM: I think it's the inactions that have been taken by this committee, Your Honor. In the two years in place, they have filed four pleadings in this case, all of which address preservation of rights. Joinder of opposing ERS bondholders' adequate protection, and we in response to everything located -- 179, 231, 280 and 296, all before they started to get active in March of this year.

Why did they start to get active? Why did they wake up from their slumber? The answer I submit is simple. Because at the end of January, the First Circuit found ERS bondholders have perfected security interest in this case. And in the beginning of February, we filed a motion to seek the appointment of a trustee under Section 926 to recover the assets that I just described have been sent to the Commonwealth, which occurred post petition, which we believe that the estate of ERS should seek to recover.

We ultimately settled with the Oversight Board and the Commonwealth to have a tolling agreement in place, which Your Honor approved. But none of that was done by this committee. But once they saw that we are back to active, and most importantly that we have filed our claims, you know, again, a total of three billion -- I think between our group

and the Jones Day group, we have close to two-thirds of that. We have filed taking claims in the Commonwealth case, an administrative claim we submit because it all took place post petition. But that's a very real threat to the unsecured creditors of the Commonwealth, and for this committee to act.

So they've now awoken from their slumber and have started taking action against our claims, which is fine because, at the end of the day, the claim that they are asserting has already been asserted by the Commonwealth. It's an alleged claim that our bonds are *ultra vires*.

This was asserted by the Commonwealth in the Motion to Dismiss before Your Honor on the taking claim. The UCC for the Commonwealth never intervened in that action, took those claims, repackaged it and filed the objection here in this case. This isn't about -- to avoid that objection.

The Retiree Committee has also done a copycat objection, so Your Honor's going to deal with that objection. We're going to deal with it --

THE COURT: I need you to wrap up.

MR. CUNNINGHAM: So in our view, again, the emperor has no clothes here in that this is a very real conflict, and both the *ShoreBank* case, which did say that lack of adequate representation would include conflicts which show a breach of fiduciary duties or likely breach -- we think any action by this committee to fulfill fiduciary duties to recover assets

to -- for ERS to pay ERS creditors is going to violate its fiduciary duties to the Commonwealth, to the extent the Commonwealth is in the cross hairs, which it clearly is, Your Honor.

THE COURT: Thank you.

MR. CUNNINGHAM: Thank you.

THE COURT: Good morning.

U.S. TRUSTEE LECAROZ ARRIBAS: Good morning, Your Honor. Monsita Lecaroz on behalf of the U.S. Trustee and Department of Justice.

Good morning, everyone.

THE COURT: Good morning, Ms. Lecaroz.

U.S. TRUSTEE LECAROZ ARRIBAS: Your Honor, I wanted to reiterate our objection to the Puerto Rico Funds request. We understand our objection stands on its own. However, given the Puerto Rico Funds Reply, I wanted to clarify that at no time did the U.S. Trustee imply that there was no ERS creditor in the committee. We did not affirmatively include it as an argument because we understand that our other arguments under 1102, on their own warrant that the Puerto Rico Funds request be denied.

We also wanted to assert the U.S. Trustee's interest in and monitoring of the Official Committee's performance and composition, which could undergo changes if we deemed it necessary. And we would have done so, so far, if it had been

deemed necessary.

Your Honor, we take our statutory duty very seriously, and we believe it should not be entrenched upon. Thank you.

THE COURT: Thank you.

Mr. Despins.

MR. DESPINS: Good morning, Your Honor. Luc Despins with Paul Hastings on behalf of the Official Committee.

Briefly, I will address some of the points that were just made. The first thing is that it seemed to be a switch in the relief that was sought. The motion clearly said it's a motion to vacate the appointment of the committee as ERS' committee. Changing those words doesn't make the relief different.

Again, I think you focused on it, and that's the right analysis, which is I've never seen a case where a secured creditor is heard to get a committee to be disbanded for the simple reason that, we're natural enemies. That's the nature of the beast. And of course, every secured creditor by definition wants a committee to be eliminated.

What I would address very briefly, because in the Reply they raise an issue, which is there is no evidence that SEIU has the mantle, if you will, to represent these employees that are members of SEIU.

And I want to cite very briefly to Puerto Rico Law,

Chapter 51(a), Labor Relations, Public Service Section 1453(g), that says that every duly certified exclusive representative, which SEIU is pursuant to a collective bargaining agreement, may sue or be sued and appear as plaintiff or defendant before the commission, the courts of justice, et cetera, as an entity or as the representative of its members.

And if you look at the list of creditors that the Commonwealth -- or that the Oversight Board filed for ERS, there are thousands and thousands of SEIU members that are listed as ERS creditors. So I think that resolves the issue.

We don't think there's a need to have a member of the committee be an ERS creditor, but in the event we have one and, you know, we -- other than this alleged inaction, which frankly, we don't follow, everything the Committee has done has been to protect the interests of unsecured creditors of ERS and to address the issue of how do we awaken from her slumber.

The point is these bonds are non-recourse, Your Honor. If Your Honor ruled, and actually you did rule, that effectually their collateral was nil or close to nil, that was game over. Unfortunately, from our point of view, the First Circuit reversed, so there was no need to go after the underlying bonds until the First Circuit reversed.

So yes, I would like to file these complaints all the

time. It's good money. But the point is why do that if there's a ruling by the Court that the collateral -- there's no collateral. At that point, there's no need to do that.

Yes, First Circuit reversed. At that point we needed to go and assert those claims to avoid the bonds themselves -- it's why we took that time. It's not because we didn't think about it before. It's because it didn't make sense to do that before.

Thank you, Your Honor.

THE COURT: Thank you.

Mr. Cunningham.

MR. CUNNINGHAM: Your Honor, briefly, our motion to vacate is as to this committee. And we would, as I said, modify that because we cited 1102(a)(4) to have Your Honor simply order the removal of the Committee members, and if the United States Trustee -- because there's a top 20 list that I assume they've looked at of other unsecured creditors. There's other claims that have been filed. If they want to appoint our committee members to this committee, we have no problem with that. We are not trying to eliminate the UCC.

THE COURT: But given our current situation where the UCC has been appointed for the Committee for ERS and your request that I direct the U.S. Trustee to change the composition of the Committee for ERS to include only ERS creditors, you're either asking me effectively to direct the

U.S. Trustee to appoint a stacked committee for ERS, or you're asking me to direct the U.S. Trustee to gut the current UCC, load it with ERS people, whereupon the Commonwealth and HTA unsecured creditors will complain that everything is stacked against them.

So I don't really see a practical difference in your request for relief. I think it always comes down, still, to an attack on the appointment of the committee as it has been done for ERS.

What am I missing?

MR. CUNNINGHAM: Your Honor, six of the members -- you just described -- six of the members of the UCC admittedly have no claims against ERS. Why is that the case? I mean, that you're having unsecured creditors or not even ERS creditors -- and this is not a multi-debtor case with affiliated entities that they try to cite.

ERS is a trust, and the only reason the instrumentality is -- it was created by statute, but it doesn't mean they get to import some other creditors' committee. And some other creditors don't even have claims against ERS. If you're going to do that, borrow the creditors' committee -- at least there won't be any conflict, the one creditors' committee counsel just mentioned, SEIU, that, I understand, Your Honor, has held they are creditors of ERS for purposes of filing under that 906. However, Your

Honor hasn't made a determination of whether they can adequately represent the unsecured creditors in this case. Given then again they labor under both concepts, they wear both hats, but now, as we heard this morning, their mantle, as he calls it, is to protect the retiree benefits.

Well, the retiree benefits here, which we just described under this proposed deal, are going to have a range of recoveries under those creditors between 91 percent and -- Your Honor, the maximum discount is eight and a half percent. And ironically, you hear the government -- Governor and Commonwealth say it's not enough.

In the meantime, all other ERS creditors, whether ERS bondholders or other trade or other vendors that Mr. -- now, in his pleading he says, we are left for road kill in terms of this case --

THE COURT: Please wrap up.

MR. CUNNINGHAM: We think the focus has to be on the issue of conflict. If I can add this one last point, Your Honor.

THE COURT: Yes.

MR. CUNNINGHAM: We cited and made mention of the *Venturelink* case, the case predated 1102(a)(4), by Judge Felsenthal years ago, dealt with a committee counsel and removal of the chairman of a committee based on a conflict. And at that time, without 1102(a)(4), it looked at whether the

trustee actions were arbitrary and capricious because of claims against that former board member, chairman of the board, with respect to monies that had flowed just prior to the case and its removal. And the judge thought that that was the appearance of a conflict.

And the Court, in granting the -- in ordering the removal, said -- this is 299 B.R. 420 at page 423. This Court has held that a conflict of interest that amounts to a breach of that fiduciary duty constitutes the type of conflict that would mandate removal of the creditor from the committee. The Court adds, the appearance of a breach of that fiduciary duty should likewise mandate a removal. The bankruptcy process must be fair and appear fair.

We don't believe having the aggressors, Unsecured Creditors' Committee, Commonwealth Committee, be the Creditors' Committee for ERS, sets up a process that is fair and appears fair in the largest municipality bankruptcy case here. We don't believe, analogous to HTA and PREPA, because they have their Oversight Board, creditors, and they can raise whatever claims they make -- they didn't have the post-petition legislation we had, Your Honor.

THE COURT: Thank you.

MR. CUNNINGHAM: Thank you.

THE COURT: Before the Court is the Motion of the Puerto Rico Funds to Vacate the Appointment of the Official

Committee of Unsecured Creditors in the ERS case. That motion is docket entry number 6162 in the 17-3283 jointly administered case; and docket entry 433 in the ERS case, which is 17-3566. And I will refer to it as "the Motion."

In the Motion, the Puerto Rico Funds request entry of an order vacating the appointment of the Official Committee of Unsecured Creditors in ERS' Title III case. And I'll refer to that committee as "the Committee."

Alternatively, the Puerto Rico Funds argue that the Court should reconstitute the Committee's members in the ERS case to be comprised solely of members holding unsecured claims against ERS. And the Court has carefully considered all of the written submissions and listened carefully to the arguments made in court today.

At the outset, the Court notes that there is a question as to whether, as putative secured creditors of ERS, the Puerto Rico Funds are properly in a position to attack the membership of an unsecured creditors' committee. And this is a point to which the U.S. Trustee also alluded in her submission, docket entry number 7129.

Putting that question aside, and for the following reasons, the Court concludes that it does not possess the authority to disband the Committee under Sections 1102 and 105 of the Bankruptcy Code. And as to the Movants' request that the Court reconstitute the Committee, or direct the

reconstitution of the Committee, the Court finds that the Puerto Rico Funds have failed to demonstrate that such a change is necessary to ensure adequate representation of creditors as required by Section 1102(a)(4) of the Bankruptcy Code. The Motion is therefore denied.

Section 1102(a) of the Bankruptcy Code governs the formation, appointment, and modification of official committees. The powers set forth in that section are the only powers over committees that the Code gives to the Court, and nothing in Section 1102(a) confers on the Court the power to disband a committee appointed by the United States Trustee under Section 1102(a)(1).

Furthermore, Section 105 of the Code, 105(a), is neither an independent source of rights, nor a source of substantive authority. And the Court does not find in Section 105(a) a source of authority to grant the relief requested by the Puerto Rico Funds.

In Re: City of Detroit, 519 B.R. 673, (Bankr. E.D. Mich. 2014), which I'll refer to as *Detroit;* and *In Re: Pacific Avenue, LLC*, 467 B.R. 868, (Bankr. W.D. N.C. 2012), which I'll refer to as *Pacific Avenue*, are not persuasive as to the existence of court authority to vacate the appointment of an official committee.

The *Detroit* decision is based in part on the applicability of Section 1102(a) to proceedings commenced

under Chapter Nine of the Bankruptcy Code. Here, Section 301(d) of PROMESA provides that a reference to this title, this chapter, or words of similar import in a section of Title 11 of the United States Code, shall be deemed to be a reference to Title III of PROMESA.

Thus, the reference in Section 1102(a) to an order of relief under Chapter 11 of this Title is deemed to be a reference to PROMESA Title III and requires the appointment of a Committee of Official Unsecured Creditors after the Court Order for Relief in the Title III case. Thus, the reasoning in *Detroit* regarding the inapplicability of Section 1102(a) to Chapter Nine proceedings is not instructive in these Title III proceedings.

The Court further concludes that Section 105(a) of the Bankruptcy Code does not empower the Court to disband an official committee appointed by the United States Trustee under Section 1102(a), and therefore, declines to adopt the *Detroit* Court's Section 105(a) analysis.

The *Pacific Avenue* Court's reasoning regarding Section 105(d) is similarly unpersuasive. Particularly since the committee appointment in that case had been made by the Court in the first instance in the absence of a U.S. Trustee program. The motion is therefore denied insofar as the Puerto Rico Funds' request that the Court disband the committee that has been appointed in ERS' Title III case.

As to the alternative request, the movant's request that the committee's membership be reconstituted to be comprised solely of members holding unsecured claims against ERS, Section 1102(a)(4) of the Bankruptcy Code, incorporated into PROMESA, permits the Court to order the United States Trustee to change the membership of a committee appointed under this subsection if the Court determines that the change is necessary to ensure adequate representation of creditors.

The Puerto Rico Funds have not demonstrated that a change in the membership of the committee is necessary to ensure adequate representation of unsecured creditors in the ERS case. The alternative relief sought by the Puerto Rico Funds would effectively result in a direction from the Court to the U.S. Trustee to create a separate unsecured creditors committee for ERS. That is an extreme remedy that could generate significant transaction costs for all creditors involved in the ERS case.

As the U.S. Trustee and the Committee have noted in their submissions, a single committee is frequently appointed in large multi-debtor cases to represent the unsecured creditors of related debtors whose cases are being jointly administered. These committees often consist of creditors with a variety of viewpoints, and mere conflict of members of an official committee is not a basis for modification of committee membership in the absence of specific evidence that

committee members have breached fiduciary duties.

Movants have not persuaded the Court of any actual breach of fiduciary duty on the part of the Committee, nor have Movants demonstrated that an insurmountable conflict exists among Committee members. For this reason, the Motion is denied.

Arguments regarding the potential conflicts on the part of the Committee or individual members, where relevant, can be raised and considered in context as the Committee takes positions in these Title III proceedings. And the Court will enter an order reflecting this decision.

Thank you, Counsel.

The next contested item is the Committee's Motion to Establish Procedures Regarding the Omnibus Objection to the Claims of the ERS Bondholders, and before I hear from counsel, I have some remarks.

So I observed on Monday night that Mr. Despins filed an informative motion addressing a request from the Retiree Committee that its claim objection from April 23rd should be consolidated procedurally with the claim objection procedures that are before the Court today. And last night the ERS Bondholder Group, represented by Jones Day, filed a response to that informative motion.

Given that the Retiree Committee's Omnibus Objection was filed nearly two months ago, it should be no surprise that

I was not expecting a new filing and a description of a dispute in an informative motion at the 11th hour before this hearing. In the future, when such issues arise, I anticipate that you will coordinate among the interested parties in a timely fashion and submit a proposal to the Court for the orderly presentation of the application, including briefing of any disputes that cannot be resolved consensually. And that will allow disputes, like the one that appears to continue here, to be considered and resolved in an orderly and efficient manner.

There's no good reason to have to deal with procedural issues like this on the fly. And I don't believe, given the objections that the ERS Bondholder Group has previewed in the Response filed last night, that it would be an efficient use of resources to address these issues today. And I suggest that the parties meet and confer to try to work out the issues, and if disputes remain, the parties should work out a joint proposal for orderly briefing of the issues regarding coordination with the Retiree Committee's objections.

I have to point something out about the proposal that does exist, however broad or narrow it ends up being. I will require one change. The Revised Proposed Order that is on the books now includes two provisions under which certain filings in any given matter will be deemed filed in other contested

matters and/or adversary proceedings. It sounds like something that will be easy for counsel and work really well for counsel, but it's entirely unworkable for the Court. So any filing that is expected to be considered in multiple matters must reflect all the relevant captions and be filed in each relevant matter.

So my proposal is that we adjourn this matter so that you can work out an agreement and/or an orderly briefing of the issues regarding coordination, so I can resolve it on submission. Does anyone want to be heard on this?

MR. DESPINS: No, Your Honor.

THE COURT: All right. So we will mark this as adjourned to the July Omni, but I will expect that I'll have either an agreement or briefing substantially in advance of the July Omni. Thank you.

Just one moment. Yes. So now Agenda Item IV.3 is the Debtors' Motion to Amend the Omnibus Objection Procedures.

MS. STAFFORD: Good morning again, Your Honor.

THE COURT: Good morning.

MS. STAFFORD: Laura Stafford from Proskauer Rose on behalf of the Financial Oversight and Management Board.

As Your Honor knows, there are well over 300 thousand claims pending on this basis, and it isn't individual claims. It would be overburdensome to the Court and, frankly, the debtors themselves, to file objections to the docket on that

number of claims. That's why we sought the modification of procedures last fall, and now that we've identified issues with many of the claims, we're here to file substantive procedure objections as well.

These procedures were developed in confirmation and coordination with the Court's office staff and we believe represent an efficient means of handling the large number of claims pending in this case, while preserving claimants' due process rights.

THE COURT: May I ask you to speak just a little slower?

MS. STAFFORD: I'm sorry.

THE COURT: Thank you.

MS. STAFFORD: The claimants receive information via the Omnibus objections sufficient for them to understand factual and legal bases on which there's objecting to their claims. The primary objection raised by the Committee to the motion is the motion should be adjourned until an ADR motion has been filed.

We filed an ADR motion last Wednesday. It is currently set for hearing at the July 24 Omnibus. There is no reason, in our view, to delay this motion and further delay the ability to reconcile claims against them during the six weeks while that other motion will be pending.

The Committee's other objections highlight concerns

about evidentiary issues, all of which we believe are better suited to be considered by the Court in the context of individual objections to individual claims. To begin, the Committee objects that the procedures purportedly put the evidentiary burden on the creditor instead of debtors. The procedures don't purport to do anything of the sort.

And it appears the Committee is concerned they will be boilerplate, that statements will parrot on which we seek objections, but that is not the case. The debtors will provide enough information to understand what the bases for their objections may be.

For example, for a books and records objection, we would indicate that the debtors' books and records suggest that an invoice of a certain amount was provided and a payment was made on a certain date by a certain check. That information we believe is sufficient to provide the claimants with enough notice of the evidence being presented against them.

To the extent Your Honor has concerns about the sufficiency of any of those bases for an objection, that we believe is a question for the Court to consider at a hearing on the objection and not a basis to deny our ability to proceed with an Omnibus objection at all.

With respect to the specific additional substantive grounds to which the Committee objects, we'd submit all three

of these grounds are very common grounds on which to object to claims in bankruptcy cases, especially in large, complex cases such as this one. As we noted in our papers, certain districts even permit these types of grounds for substantive Omnibus objections in their rules.

With respect to the -- I'll just briefly note the three substantive grounds that the Creditors' Committee has objected to. With respect to the books and records objection, as I noted before, we intend to include pertinent information from the debtors' books and records, and creditors of course will retain the right to object and present their own evidence in response.

With respect to the unliquidated claim basis, the Creditors' Committee appears to be objecting on the basis that a claim cannot be disallowed solely on the basis it is unliquidated. But as we noted in our papers, that's not what we're seeking to file, an objection, on an Omnibus basis, such that those claims can be limited in order to determine whether and to what extent allowed.

And with respect to the final substantive basis that the Creditors' Committee has challenged, which is the no liability basis, I would submit that is a very common basis on which to make Omnibus objections in large bankruptcy proceedings. And it's particularly necessary here where thousands of claims have been filed that assert liabilities

that certainly are not properly asserted against the debtors, or estate, because bonds arise out of other entities unrelated to Title III debtors --

THE COURT: And again, would you expect to lay that out clearly in the objection to claim?

MS. STAFFORD: We certainly would, Your Honor.

THE COURT: Now, the proposed procedures include a per motion cap that's substantially higher than a cap that I understand was discussed with the Administrative Office, and it raises logistical concerns both at the Clerk's Office level and, frankly, at the level of my very limited staff in terms of preparing for Omnibus Hearings. And so with a cap of 30 omnibus objections for any single omni and the cap of 1,000 claims per motion, we could see up to 30,000 claims that are the subject of substantive objections being cued up for a single omnibus hearing. And that -- and it makes me shudder.

So at what rate, as a practical matter, do you contemplate you would be filing objections under these procedures? And I'd like your thoughts on how you would intend to manage the process to avoid overburdening a single hearing, such as by seeking to adjourn hearings on objections that receive substantial responses, or some other techniques to help me out here.

MS. STAFFORD: Completely understood, Your Honor. And I think one of the challenges that we face is that our

ability to put single Omnibus objections together that cover 500 or even a thousand claims at a time is somewhat difficult. And as you'll notice, a number of the Omnibus objections that are scheduled for hearing today, some of them meet the cap of 500, but many are well below and have more along the lines of 23, or seven, or -- at a low, seven claims per objection.

So even though we are hoping to set up to 30 objections per hearing, we understand that it's unlikely that there will be up to 30,000 claims that will actually be heard in any given hearing because of the way we need to bring claims across Omnibus objections. So we're hopeful we never are in a position where 30,000 claims are heard at a single hearing.

We're happy to consider, when appropriate, to adjourn hearings if we receive a large number of responses, especially that some of these are substantive responses, bases that need to be dealt with over a longer period of time. So we're happy to work with the Court when it comes to finding a way to make it as manageable as it can be.

THE COURT: I appreciate that.

MS. STAFFORD: Yes.

THE COURT: And I have one other question for you. You indicated in your papers that there are certain types of claims or issues that you think would not be amenable to the ADR process that you've proposed in connection with the July

Omni. Can you elaborate on such categories of claims?

MS. STAFFORD: Those would include bond claims, principally claims arising out of funded indebtedness. Those are the types of claims we don't necessarily deem appropriate for ADR procedure, which we are hoping to work with and deal with vendor claims and accounts payable type claims.

THE COURT: Thank you.

MS. STAFFORD: Thank you.

THE COURT: Mr. Despins.

MR. DESPINS: Your Honor, we filed a limited objection and it's based on two issues really. One, there was no AD -- before this draft motion was combined with an ADR procedure, these two were separated. Now we see the ADR motion, and we say in our objection, paragraph one, that we don't agree with that structure.

And you might say, well, that's not before me; we'll deal with that later. That's fine. We just wanted you to know that something along the lines of something like the Detroit bankruptcy, with mediation and arbitration -- and to put a fine point on this, arbitration with people based in Puerto Rico that have legal training in Puerto Rico and that speak Spanish. The reason for that, Your Honor, is simple. I don't know if you remember this. You probably remember this. I remember in New York there was a COFINA claims objection. The claimant was here in Puerto Rico. And you were very

patient, and this is a claimant that said they owned land around COFINA --

THE COURT: Yes.

MR. DESPINS: -- but there was no land. But anyway, the point is that was just a vignette or a little example of that multiplied by hundreds of thousands of what's going to happen. And in that context, not having at first local arbitrators I think will be a real impediment, but at the end of the day, that's your call. Meaning I have no legal tools to make that happen over my -- we have no -- we raised that with the Board. They rejected it. So I'll move on, but I think it would help address a lot of the issues I am about to address in a second.

THE COURT: Well, in connection with the continuation of the procedures in July, I'll invite you to, if you wish, use your briefing argument space to explain how you would anticipate coordinating the logistics of soliciting informed consents and waiver of judicial processes by people to go into a binding arbitration proceeding in the first instance, and, you know, the transaction costs of that sort of approach in addition to recruiting and managing arbitrators and how that could happen. I'd be happy to hear that, but not --

MR. DESPINS: No. No. We can do that, and it's been done in other cases before.

So now let me turn to the motion itself, and I would

say that generally this is -- I will stipulate this is a standard motion, but the problem is this is not a standard case. And we heard this morning from Your Honor about just an issue, very simple, what is a duplicative claim; what is not a duplicative claim; and whether, when we're dealing with a books and records objection -- and let's be clear about that. A books and records objection is something that lawyers like me created. There's nothing like that under the Rules. It is necessary to deal with the claims, and practically, it's a burden shifting device.

And the first question with books and records objections -- Alvarez & Marsal is a good firm, but I guarantee you they don't have all the books and records of the Commonwealth. In fact, the Oversight Board spent millions of dollars for an investigation to investigate where is the cash.

If it takes you millions of dollars to investigate where is the cash in the Commonwealth, and we know that the Commonwealth's books and records for 2017 have not been finished yet, they haven't been audited -- so the point we're making, Your Honor, is that -- I know you said, will you put more than books and records, and I said yes, of course we will. We have severe doubts that that can be accomplished, and that's why a more informal arbitration process -- that's why I'm not combining the two.

I know it's not before Your Honor, but with respect

to people who understand how the government works and local laws and all that, it would be much more beneficial. But again, I can tell you in other cases, books and records objections have been approved. I filed them when I represented debtors. So I can't tell you it's not been done, but on the record here, where there's been no auditing of books and records we're talking about, and the fact that we know that one of the -- in PROMESA, it talks about lack of transparency. I'm not making that up. It's in the statute. It's because of these issues.

And you might say, well, we can deal with that when the objection process actually unfolds, but the reasons are -- I'm concerned we won't be there at that point. Why? Because we can't represent individual claimants. That's not our job. We represent claimants as a whole.

So who is going to watch out for these people, the pro se people? That's why I'm raising now --

THE COURT: So who would be watching out for them in individual arbitrations?

MR. DESPINS: Neither, but I think there a level of -- or the Committee believes there will be a greater level of comfort because, one, it's going to be done with people that have a legal background in Puerto Rico law and that have the experience of dealing with Puerto Rico claims involving the government. That is the goal or the -- that's the belief

at least, that it would be more beneficial to those claimants. At least they will perceive it to be more beneficial to them.

Whether at the end of the day it accomplishes a result, I don't know, Your Honor. But it's true we're not going to represent them in arbitration either. But we do have concerns to applying the typical big Chapter 11 rules to this process, and that's what we are communicating to the Court, Your Honor.

THE COURT: And of course the Court is also sensitive to not only the volume of claims but the nature of objections and nature of claims; and at the end of the day, the Court will have to determine whether whatever the Oversight Board has offered up in the claims objection is sufficient to rebut prima facie validity of the case. This is not -- of the claim. You know, it will be me. It's not a machine.

So, these things have to be taken into account and considered at all levels, and no matter of mechanism -- the boards aren't shifting. There may be reasons for me to scrutinize more carefully or be more concerned on the front end of what's being offered up in the way of context in the way of claims objections, but I want to assure you and everyone listening that this -- the Court is not considering any of these claims objections procedures rubberstamp procedures. And as you heard this morning, the Court specifically raised the concern and had in mind the concern

before the withdrawal of the duplicate problem claims, you know, the fact that it didn't seem to be working. And so the Court is putting that to the test.

MR. DESPINS: It puts a huge burden on the Court, but I was very pleased to hear what you said. There is no doubt about that. It puts a huge burden on the Court.

THE COURT: Don't I know it.

MR. DESPINS: But again, this was on cookie cutter stuff. Now, going to the next level, pro se claimants, we're just concerned about that.

THE COURT: Thank you. I hear you.

Anything further, Ms. Stafford?

MS. STAFFORD: Just briefly, Your Honor. We appreciate that it does put some burden on the Court, and we also appreciate the concerns that the Court had with the previous claims. Okay. And I think our willingness to go back and re-review the claims and confirm that the claims that we've put on our objections are in fact exact duplicates, that's exactly the same level of concern and care that we plan to take as we move through these substantive objections as well.

THE COURT: Thank you.

MS. STAFFORD: And would you like to proceed on to the remaining contested motions as well?

THE COURT: Well, I should rule on this I suppose.

MS. STAFFORD: Yes.

THE COURT: So this Motion for Entry of an Order Approving the Amended Omnibus Objection Procedures and for the relief, which is docket entry number 7051 in the 3283 case, referred to as the motion, is before the Court. And the Court has considered carefully the requested relief and the parties' written and oral argument and finds that the proposed relief is appropriate under the circumstances.

The procedure will enable the debtors to resolve efficiently tens of thousands of claims, and will thereby reduce the transaction costs of the claims resolution process significantly. The Court acknowledges the concerns expressed by the UCC concerning the need for fair and efficient alternative dispute resolution procedures, and as we have all noted, there are proposed ADR procedures scheduled to be addressed at the July 24, 2019, Omnibus hearing. And the Committee has also raised legitimate concerns regarding the need for debtors to meet their burden of overcoming the prima facie validity of properly filed proofs of claim and the need to protect the legitimate rights of every claimant.

The Court has reviewed the procedures carefully, those being the amended Omnibus objection procedures, and finds that the proposed procedures do not change the allocation of the burden of proof. Each properly filed proof of claim will retain its prima facie validity pursuant to

bankruptcy three -- 3000(f), and the Oversight Board will have the burden of coming forward with evidence or legal argument sufficient to overcome the presumption of prima facie validity.

The claimants will have the same right to the Omnibus claims related to this Order as they would have with respect to an ordinary individual claim objection. And individuals with claims in these Title III cases will have the ability to submit supporting evidence and legal arguments in defense of their claims.

The Committee has suggested the procedure should advise claimants of their right to seek discovery concerning the objection to their claims. The Court declines to single out that aspect of bankruptcy procedure for inclusion in notices to claimants. Claimants represented by counsel should not need that reminder, and capturing the conceptual and operational aspects of discovery and notice materials would unduly lengthen those documents.

The process will be subject to supervision and oversight by the Court, which will ensure that the process is fair, transparent and efficient. The procedures streamline the claims resolution process in a manner that is common in complex bankruptcy cases, and such procedures are necessary in light of the large number of proofs of claim filed in these Title III cases.

Accordingly, the motion is granted and the Committee's objection is overruled. The Court will enter the debtors' Proposed Form of Order.

MS. STAFFORD: Thank you, Your Honor.

THE COURT: Thank you.

Now we can go on to the matters queued up as contested objections to claims. I think -- did we lose somebody? So have we lost Court Solutions?

All right. We'll have to take a minute because we've lost Court Solutions.

All right. I understand that we are reconnected with Court Solutions now and we can proceed. Would everyone be seated, except for Ms. Stafford? Thank you.

MS. STAFFORD: So we'll begin with the 20th Omnibus Objection of Claims of the Commonwealth of Puerto Rico, which is an objection to a number of claims that were amended and subsequently superseded. Only two responses were filed with respect to this objection.

The first of these asserts that the -- acknowledges that its original claim was amended and superseded and asserts that the original claim would have been automatically deleted as a result of the amendment, which unfortunately is not the case and the original claim does remain on the register. Because the claimant does not disagree that the original claim has been amended and superseded, we request the objection be

granted as to this claim.

THE COURT: So this is the Nestor Rodriguez Marty claim?

MS. STAFFORD: That is correct.

THE COURT: The objection is sustained and the claim will be disallowed. And so that is the objection that was the response filed at 7234.

MS. STAFFORD: With respect to the next response filed by the United States of America on behalf of Customs and Border Protection, this response asks for an order preventing the Commonwealth from later arguing that the amended claim does not properly relate back to the original claim.

We spoke with the United States and reviewed their response, and we understand that their concern is that if the Court were to find that the amended claim is an improper amendment, that the disallowance of the original claim would prejudice it because it would be left without any claim properly asserted against the Commonwealth. We understand the concerns, but we think that the proposed order the United States is seeking is simply too broad.

We've agreed that we will not contest whether the liabilities, as asserted in the original claim, were properly asserted against the Commonwealth, and we think that representation should resolve the United States' concerns. To the extent the amended claim does seek to assert liabilities

beyond those asserted in the original claim, we think it's proper to preserve our right to object to those at a later time.

THE COURT: Would you be willing to amend the Order to reflect that the objection is sustained without prejudice to the parties' positions as to the timeliness aspects of the amended claim that were not asserted in the original claim?

MS. STAFFORD: That would be great, Your Honor.

THE COURT: So if you will give me a revised proposed order that includes that language as to this claim, I will sign that order.

MS. STAFFORD: We will be glad to do so.

No further responses were filed as to the 20th Omnibus Objection, but I understand from Your Honor's comments earlier that we would submit a certification with respect to these subsequently amended claims that were not responded to, correct?

THE COURT: Yes.

MS. STAFFORD: Very well.

THE COURT: And so I will look forward to the revised proposed order with the certification, and subject to those submissions, the objections will be sustained.

MS. STAFFORD: Thank you very much, Your Honor.

THE COURT: Thank you.

MS. STAFFORD: The next objection is the 21st

Objection of the Commonwealth of Puerto Rico to deficient claims. Only one response was filed as to this objection. We reached out to and spoke with that respondent, and we are happy to report that she has withdrawn her claim and will be filing an amended claim asserting an appropriate amount of liability, which we reserve our right to object to at a later time. But it's been withdrawn for purposes of this objection at this time.

THE COURT: Very good. So you will be making a submission reflecting that withdrawal and truing up the paperwork?

MS. STAFFORD: That withdrawal should be reflected in the amended schedules that were filed last night.

THE COURT: All right. So I guess we just need to figure out at least --

MS. STAFFORD: Of course.

THE COURT: I need to understand whether the Court has to file an order reflecting the withdrawal of that claim, and so I am hereby asking my staff to figure that out and reach out to you for any additional proposed order that might be necessary in that regard.

MS. STAFFORD: And we'd be happy to submit anything if anything further is required.

THE COURT: Thank you.

So now we have the 23rd?

MS. STAFFORD: Yes, Your Honor. The 23rd objection seeks to disallow 500 claims that are exact duplicates of other claims.

THE COURT: Okay. I'm sorry. So as to the remaining responses, the remaining aspects of the 21st, you will provide the certification with the proposed order or --

MS. STAFFORD: So this is a deficient claim objection, so we're happy to provide a certification that they've been re-reviewed and that there's insufficient bases for each of these claims as well.

THE COURT: Thank you. And so I suppose you could include in that order my so ordering the withdrawal of the other claim, and then that would satisfy my paperwork concerns.

MS. STAFFORD: That sounds perfect, Your Honor.

THE COURT: Thank you.

MS. STAFFORD: The 23rd Omnibus Objection, as I noted, it seeks to disallow 500 claims that are exact duplicates of other claims filed by the same claimants. We have five responses that were filed. The first of these was filed by Cooperativa de Seguros Multiples, and we have reached out to the debtor in order to resolve their concerns.

THE COURT: The claimant.

MS. STAFFORD: The claimant. I'm sorry.

We've removed proof of claim 25007, and we've swapped

two claims such that 21148 will be disallowed and 24275 will be a remaining claim. And that should be reflected in the Revised Proposed Order and Schedule filed last night.

THE COURT: So this is a Cooperativa de Seguros claim?

MS. STAFFORD: That's correct, Your Honor.

THE COURT: Okay. So with those swappings in and out, that objection will be resolved?

MS. STAFFORD: That's correct.

THE COURT: And those will be reflected in the same order.

MS. STAFFORD: Yes.

THE COURT: All right. Are we all right? Can we proceed? We can proceed? Okay.

Okay. Thank you.

MS. STAFFORD: No problem. The next three objections that were filed were filed by individuals by the last names Caraballo Martinez, Bravo Quiles and Centeno. Each of those we understand were incorrectly flagged as exact duplicates and we've withdrawn our objections to those claims as reflected in the schedules filed last night.

THE COURT: Very good.

MS. STAFFORD: The last response filed was filed by Maritza Barris Rosario. The response does not address the substance of the action and simply notes the claimant's

service as a teacher.

We're deeply mindful of the concerns Ms. Barris Rosario raises, but nothing in the claims raises the claim that the claims are exact duplicates or that Ms. Barris Rosario reserves her right to assert the claim under the surviving claim. So I assert the objection should be granted, not withstanding the response.

THE COURT: I've reviewed the Response and Reply to the Response, and I sustain the objection as to the claim. The two claims duplicate --

Apparently they can't hear on Court Solutions. Is it a volume issue or a can't-hear-at-all issue? All right. We're having trouble getting it unmuted.

MS. STAFFORD: Okay.

COURTROOM DEPUTY: It's claiming it's unmuted.

THE COURT: I don't think anyone's sitting on the edge of their chair to hear how I resolve this claim, so let me just finish.

So the objection is sustained as to the two claims of Ms. Barris that duplicate her earlier claim 152207, which will remain on file. And you'll reflect this in the revised order with the certificate.

MS. STAFFORD: That's correct, Your Honor.

THE COURT: Okay. So let's just wait one second to see if there's anything we can do about the Court Solutions

problem.

This is a test. I'm going to ask somebody who's listening on Court Solutions if they hear this to I guess -- okay. The person who is monitoring it, court staff, should text or e-mail us to let us know if she can hear. So we're good?

All right. I'm told it's working again so we can proceed. I think we are up to the 24th Omnibus.

MS. STAFFORD: That's correct, Your Honor. The 24th Omnibus Objection seeks to disallow 500 duplicate claims.

THE COURT: I'm sorry. A little slower and a little louder.

MS. STAFFORD: The 24th Omnibus Objection seeks to disallow 500 claims filed against the Commonwealth that are exact duplicates of other claims. Seven responses were filed, and upon review of each of those responses, the claims were withdrawn from the objections last night. We actually also re-reviewed the claims subject to objection and withdrew additional claims.

And we'll be happy to submit a proposed order and a certificate per Your Honor's request.

THE COURT: Very good. Subject to the submission of the certification, the Court will sustain the objections listed in the revised order, and I'll look forward to those submissions.

MS. STAFFORD: Thank you, Your Honor.

On the 25th Omnibus Objection to claims, this is also an objection to 500 exact duplicate claims filed against the Commonwealth by the same claimant. One response was filed, and upon review of that response, we've withdrawn our objection, as noted in the schedules filed last night. We've also re-reviewed, as we re-reviewed all of the exact duplicate objections, and removed additional claims from these objections -- from this objection. And we'll be happy to provide a certificate with the proposed order and amended schedules.

THE COURT: And I will sustain the objection and disallow the claims subject to that certification coming in. Thank you.

MS. STAFFORD: Thank you.

The 26th Omnibus Objection also seeks to disallow 500 claims filed against the Commonwealth that are exact duplicates of other claims filed by the same claimant. Only one response was filed, which again, upon review, we realized was not in fact an exact duplicate.

And as to the amended schedules filed last night, we reviewed our objections and we reviewed all the claims subject to objection. And we reviewed additional claims, and we will file a certificate as well.

THE COURT: Thank you. We will look forward to that

submission, and with that, sustain the objection and disallow the claims properly subject to objection.

MS. STAFFORD: With respect to the 27th Omnibus Objection sought to disallow 299 claims of other claims filed by the same claimant, five responses were filed. The first listed on agenda is filed by the University of Puerto Rico Retirement System. They objected solely on the basis that -- or responded solely on the basis that they had filed claims through two different systems, and they wanted to confirm that there would be no assertion that one system was not valid and the other system was valid.

They did not dispute that the claims were duplicative, and because they did not dispute the claims were duplicative, we would request the Court grant the objection, not withstanding the response.

THE COURT: I've review the Response, and the objection is sustained. The trust is conceding that the claims are duplicative, and therefore, they should be disallowed in the order to be submitted.

MS. STAFFORD: With respect to the -- thank you, Your Honor. And with respect to the remaining four responses, these are all responses that indicated that the claims were not in fact duplicative, and upon review of those responses, we have withdrawn those claims from our objection, and also re-reviewed the claims subject to this objection and submitted

revised amended schedules withdrawing additional claims. And we'll provide a certificate for the Court as well.

THE COURT: Thank you. And so subject to that submission and the submission of the revised proposed order, the Court will sustain the objections to the remaining claims.

MS. STAFFORD: Thank you, Your Honor.

The 28th Omnibus Objection seeks to disallow 23 claims that are exact duplicates of other claims filed by the same claimant against HTA. Only one response was filed, also by the University of the Puerto Rico Retirement System, on the same bases as the prior objection. Namely, that they filed claims through both -- two systems and wanted to confirm that one claim -- one system would not be viewed as more valid than the other.

They do not dispute, again, that the claims are duplicative, and as a result, we would request that the objection be granted not withstanding the response.

THE COURT: The objection is sustained. And so you will provide me with the certificate and revised proposed order.

MS. STAFFORD: We will do so, Your Honor.

THE COURT: Thank you.

MS. STAFFORD: Yes. The 30th Omnibus Objection to claims seeks to disallow 133 claims, exact duplicates of other claims filed by the same claimant. Only one response was

filed, again by the University of Puerto Rico Retirement System, raising same concerns about filing claims through two different systems. But again, Your Honor, it does not dispute the claims are duplicative, so we would request that the objection be granted, not withstanding the response filed.

THE COURT: The objection is sustained, and I look forward to the submission.

MS. STAFFORD: Yes, Your Honor.

THE COURT: Thank you.

MS. STAFFORD: And I also wanted to note on the 28th Omnibus Objection, we also have swapped two claims upon reaching agreement with the United States of America. Two claims -- one claim from the disallowed category to the allowed category, and vice versa. And that's reflected in the schedules filed with the Court.

THE COURT: And so that will be reflected in the order that comes in with the certificate?

MS. STAFFORD: Yes, Your Honor.

THE COURT: Thank you.

MS. STAFFORD: Moving on to the 31st Omnibus Objection to claims, this seeks to disallow 500 claims, exact duplicates of other claims filed by the same claimant. Only one response was filed, and that response requested that we also swap the claims disallowed and that would survive, which we have done. And we've filed an amended schedule to that

effect.

We've also re-reviewed all these claims that are asserted to be exact duplicate claims for any issues, and we'll be happy to provide Your Honor with a certificate indicating that review.

THE COURT: The objection is sustained, and I will look forward to the submission.

MS. STAFFORD: Thank you, Your Honor.

And finally, with respect to the 34th Omnibus Objection to claims, which objects to a number of claims that are late filed duplicate bond claims filed against COFINA, only one response was filed. And that response does not address the argument that the claims are duplicative of a master claim. It simply states that the claims amend a previously filed claim.

The original claim and the amended claim both assert liabilities arising from COFINA bond bearing CUSIP numbers governed by master proof of claim and a claim already disallowed as duplicative of master proof of claim. And so we submit it should be granted, not withstanding the response.

THE COURT: The objection is sustained, including as to the duplicative claim of the Cooperativa that filed the response. And I look forward to the certificate and revised order.

MS. STAFFORD: Thank you.

THE COURT: I believe that takes us through all of the contested objections.

MS. STAFFORD: I believe it does.

THE COURT: Thank you.

And this also brings us to four minutes to 12:00, so we will get an extra four minutes in our lunch break. Please be ready to resume at one o'clock. Have a good lunch, everyone. We're adjourned.

(At 11:55 AM, recess taken.)

(At 1:09 PM, proceedings reconvened.)

THE COURT: Buenas tardes. Please be seated.

And so the next item on our Agenda is the APJ's Motion for Relief from the Automatic Stay. And so I would invite the movant to come forward. We've allotted a total of 25 minutes.

MR. INDIANO VICIC: Thank you, Your Honor. My name is David Indiano of Indiano & Williams. I represent the association that represents the active judges here in Puerto Rico, the APJ, Assocation of the Puerto Rico Judiciary.

With us today, we have the president of the board of directors, as well as the treasurer, Judge Salgado and Judge Rosado in the back row to your left, Your Honor.

THE COURT: Good afternoon, Your Honors. And good afternoon, Mr. Indiano.

MR. INDIANO VICIC: I know that the Court in these

lift stay hearings focuses on the *Sonnax* factors and analyzing the determination to lift a stay. I want to spend some time in analyzing one of the more fundamental issues that we believe precedes and even supercedes some of these considerations in this particular matter, and that is the issue of judicial independence.

The simplicity of our position has not been appreciated by the Oversight Board. The Board has no authority to force any change in the Judges' compensation or pensions. This is based on some very fundamental historical and legal facts, none of which can be seriously questioned.

Number one, Puerto Rico is a territory.

THE COURT: May I just ask you to hold on for one second?

MR. INDIANO VICIC: Yes.

THE COURT: And I've done something to my computer that is problematic. Okay. I will start a new page. I take notes on the computer, and it is just not cooperating with me.

MR. INDIANO VICIC: No problem, Your Honor.

THE COURT: It still is not cooperating with me. My apologies.

MR. INDIANO VICIC: No problem, Your Honor.

THE COURT: And of course your clock is not running.

Okay. I think it's time for pen and paper. All right. Thank you.

MR. INDIANO VICIC: I'll proceed?

THE COURT: Yes.

MR. INDIANO VICIC: As I was saying, number one, Puerto Rico is a territory. Number two, Congress' power to govern Puerto Rico is found under the Territorial Clause, which is plenary power.

Number three, in establishing the level of self-governance for Puerto Rico, Congress specifically stated in Law 600, and I quote, Said Constitution shall provide a republican form of government. That's at Section Two.

And point four, only then and if the President of the United States found that the republican form of government, quote, conforms with the Constitution of the United States, could he submit the proposed Constitution to Congress for its approval.

Section three, inherent in a republican form of government under the United States Constitution are three coequal, independent branches of government. It envisions the separation of power, and the independence of the judiciary is of paramount importance to the functioning of this republican form of government.

As clearly expressed, we know, and as I've drafted in many of the motions, language of the Founding Fathers, Hamilton in particular, and others at the very commencement of the American experiments, in exercising its plenary powers to

allow Puerto Rico to have a measure of self government, Congress used the most expansive reaches of this plenary power to create and require this republican form of government. And this would essentially mirror the Government of the United States itself.

Congress did not make an exception for the Puerto Rico judiciary. It is impossible to ignore this, nor is it possible to imagine a Congress for a moment envisioning anything other than a judiciary with independence.

This is one of the key grievances going back to the Declaration of Independence against King George, that he had the judges in their pockets. The notion of judicial independence is engrained in the American version of the republican form of government.

Once you start there, the next steps in our analysis are easy to see. After using the maximum contours of its plenary power to establish a republican form of government under the Territorial Clause, Congress passed law after law using parts of that plenary power, smaller slices to create other laws to govern Puerto Rico.

One of these slices was used when it passed PROMESA, a rather large slice, but that's all it did. It did not undo the basic essence of what it had done in the 1950s concerning the nature of Puerto Rico and its form of government.

THE COURT: Just one -- I'm sorry. Something has

happened with our phone line again.

MR. INDIANO VICIC: No problem.

THE COURT: All right. I'm sorry. We have to take a little break to get that fixed up. And maybe -- I'm sorry. Apparently we need a few more minutes for the technician to check something, so if you'd like to have a seat.

MR. INDIANO VICIC: Sure.

THE COURT: Thank you for your patience.

So have we got the sound or -- still waiting.

This is a test. Whoever is monitoring in New York and whoever is monitoring in the overflow room, let us know. Apparently New York can hear and we're back on the Court Solutions Line. Is that correct? All right.

Mr. Indiano.

MR. INDIANO VICIC: Thank you, Your Honor. I'm going to step back to what I was saying so it can flow.

THE COURT: Yes.

MR. INDIANO VICIC: When it passed PROMESA, what it did was take a piece of that plenary power and pass a very important law, a significant law, but it did not undermine the basic form of government that Congress had required for Puerto Rico back in the 1950s, concerning the not implicitly -- or explicitly upset the concept of judicial independence, and there was no reason for Congress to do so.

And when it's all said and done, this Court has

approved whatever plan, fiscal plan it approves, but all of us remaining here need an independent judiciary. The success or the failure of the economy that eventually emerges from this procedure is what the business world and the citizens of Puerto Rico need in order to have this economy that goes forward be successful.

The Board has stated that the judges are not unique in their across-the-board attempts to cut pensions. They are wrong. And there is no sense of entitlement or superiority that attaches to this uniqueness. Judicial independence is more of a cross to bear by the judiciary than some lofty perch, as the Board suggests. It is a burden of every judge to leave all personal and financial interests behind when he or she dons the robes. And I know I'm speaking to the choir, Your Honor.

No act of the legislature or the executive should attempt to impinge upon that independence. And no board, also a creature of Congress, but not Congress itself, can undo what Congress has done by requiring the establishment of a republican form of government with the intrinsic requirement of independent judiciary.

Our position is clear. There's no authority for the Board to touch the judges' pensions. And while the Board has argued disingenuously, I think, that it would be the Court, not the Board, that would ultimately cut the pensions, that

is, at best, a semantic dodge.

If the Board recognizes the limits of its power and authority with respect to this fundamental aspect of the necessity for judicial independence of Puerto Rico based on the Congressional mandate, it would not be pushed, so we would not be here, they would not be here opposing this motion to stay.

While I do not believe that the *Sonnax* factors are even necessary to address because of this preceding legal mandate of Congress, I do want to make some comments on the opposition and draw some of those factors --

THE COURT: And I also would appreciate your attention to the prematurity argument, which may have shifted now given the announcement of the RSA today.

MR. INDIANO VICIC: I'm sliding right into that. That's one of my next comments, Your Honor.

But one of the first things the Board says at page 19 of their brief is they say the issue of whether Puerto Rico's Constitution grants a priority enforceable in Title III is an issue that virtually all major creditors' groups cannot afford to ignore. It could totally derail all pending discussions.

This shows a lack of focus by the Board on the source of law for this position of the judges, which is the Congressional exercise of its plenary power of the Territorial Clause, which required a republican form of government, with

its inherent separation of powers and judicial independence.

It is not about the Puerto Rico Constitution. It is about what Congress did. This is not a priority question under the Puerto Rico Constitution. This is a mandate of Congress, and we have to look at it.

Congress never -- I mean PROMESA was never intended to undo that when it was passed. And there is no derailing here. The procedures have gone forward. There are only about 386 judicial positions of the active judges, and those are the only ones that are being held up here.

Obviously, as we've seen today, proceedings are going forward. There's settlement negotiations all over the place. And this is a purely legal issue. Our case that was filed under the Federal Court as a declaratory judgment action.

What we need -- and it can be expedited briefings. That is, there's no discovery required. There's no trial required. It's simply briefing on whether our position is accurate, correct or not. That could be expedited. It would not hold up these proceedings in any way.

And despite the judges' claim that the judges are not unique, I have no reservations saying that they are. No other branch of the government, looking at some of these other discussions that there are today, can advance the position the judiciary has of judicial independence. There are no flood gates waiting to open because of this position.

Let me now address specifically what you asked me to, Your Honor. On the point one, *Sonnax* factor one, they say in their opposition that we are premature. We know that's not true anymore. Today they basically said they're going to have their Plan of Adjustment in 30 days, whatever they can do.

So at one point we were too early, and now we are almost too late. But surely that premature argument is clearly gone. They want us to only be able to raise this purely legal question of Congressional power, and their power, in the context of the objections in a Plan of Adjustment.

We have a right to have this decided in a federal court with a right of appeal to the First Circuit, so there's no question --

THE COURT: Am I not a federal court from which there's a right of appeal to the First Circuit?

MR. INDIANO VICIC: No, that's all I'm asking --

THE COURT: I'm not?

MR. INDIANO VICIC: I'm not saying that you're not, Your Honor.

THE COURT: Okay.

MR. INDIANO VICIC: I'm not saying that. All I'm saying is we have a right to have this issue decided by a federal court so we can make it clear that this power does not reside with the Board.

There is no need to delay this resolution so we are

not subjected to the constant pressure to cede to cuts on their pensions when there is no power to do so. The noninterference with Title II -- Title III case, in *Sonnax* factor two, in that case, the Board, I think, grossly exaggerates the impact of lifting the stay. If you follow their logic, no stay would ever be lifted.

And this Board can be -- this matter can be resolved as a matter of law in discovery. We are at 386 potential spots in the judiciary of active judges. It's a very de minimis amount of human beings that are subject to this situation in the judicial branch.

In terms of judicial economy, a declaratory judgment will relieve the Court, relieve the Board of its self-perceived need to have these across-the-board cuts, in their vision of fairness, when it's not a matter of fairness. It's a matter of the form of government that we have in Puerto Rico, as mandated by Congress, requires something that they can't interfere with. And this relieves them of the burden of trying to do that with their, I think, understandable need to want to be fair across the board, but the judiciary is in a different situation.

In balancing the harms, the -- there is no conceivable way for me to look at this small amount, de minimis amount of judges as derailing the process which is going forward. And the only branch of government that has to

be protected is the judiciary in terms of its independence. It's the one branch that can't stand up for itself.

That is what all the case law and all the language of the Founding Fathers was clear on. And that is also expressed in the Puerto Rico Supreme Court case as well. This branch cannot stand up for itself and must be protected, and the independence of the judiciary must be protected. And the only way to do it is to make it clear to the Board that they are treading on grounds which are not in their ambit to deal with.

As we said in our Reply Brief, in ending, there is precious little economic impact by the government and tremendous benefit in preserving an independent judiciary that Puerto Rico must have in order to marshal the respect and confidence of all citizens of this yet-to-be-created world left after restructuring is complete.

This new economy will be stillborn, absent an independent, coequal branch of government in the judiciary. The active judges of Puerto Rico, through the APJ, request to this Honorable Court to lift the stay and allow its declaratory judgment action to proceed so that can be clear. Thank you.

THE COURT: Thank you.

MR. BIENENSTOCK: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. BIENENSTOCK: Martin Bienenstock of Proskauer

Rose, LLP, for the Oversight Board.

Your Honor, movant spent the bulk of the time talking about the merits of the case and then got to the *Sonnax* factors. I'm going to start with the Motion for Stay Relief, and then I'll make some very brief comments about the merits of the case.

The problem, the essential reason why we oppose the motion and we urge the Court not to grant it is that its logic doesn't hold up, neither for why relief from the automatic stay is beneficial to the process, is essential for the Judge's Association, or that the Board needs to be told to stop, that it's treading on waters that it has no power to tread on.

Starting with I guess the Court's question about the impact of the potential timing now of a proposed plan of disclosure statement being filed, that would powerfully argue for this Court to determine the issue that the Association wants determined.

And let's compare -- and let's see why and let's compare the two alternatives. Movant could go off to the federal court in which it filed its Complaint, and it could prosecute its action against the Oversight Board.

Now, parenthetically, we don't think it would go too far because of Section 106(e) of PROMESA, because they're essentially saying they want a District Court to hold that the

Oversight Board can't promulgate or certify a fiscal plan that impacts judges' pensions. That's precisely what 106(e) says no federal District Court can do. But they want to do that, and it's them against the Oversight Board.

Let's compare that to what we're proposing. We're going to propose a plan. As this Court knows, and as movants know, there are many parties in interest, some of them are in the courtroom now, who assert priorities on different grounds. True, no one else has the judicial independence ground. But we know the GO creditors say they have liens on all the assets and they have -- even if they don't have liens, they have first priority to all available resources.

We know that other creditors say they have an entitlement to get clawback funds back, because the clawback funds from HTA should never have been taken in the first place. All of these creditors and more are going to make their cases for priorities unless we button down everything in settlements. And everyone will be able to defend against other people's asserted priorities and prosecute their own asserted priorities. That's the way it should be. That's the way it is at confirmation hearings.

What movant is asking for is a one-off against the Oversight Board without the other competing parties asserting priority being present. It just makes no sense. They would be -- they would either have to try to intervene in movant's

action, or there would be this ruling in a case where they were not parties.

And then the first thing Your Honor would have to do is decide, well, are they really bound by another case in which they were not parties, that the judges have first priority to this money? So starting there just doesn't work.

Second, what is the need to know today before there's a confirmation, or to start an action today before this is resolved in confirmation for them to have a ruling that the fiscal plan that proposes an impact on pensions cannot be certified or has to be invalidated?

Everyone else in this case who has tried that has been turned down by both this Court and the First Circuit Court of Appeals, for reasons I don't have to go into. Everyone in the courtroom knows them, and Your Honor wrote some of those decisions.

THE COURT: I'm sorry. The sound has dropped again, so hold that thought.

MR. BIENENSTOCK: No problem.

THE COURT: This is a test. Would whoever is monitoring Court Solutions and the remote courtrooms please check in and let me know whether you can hear?

COURTROOM DEPUTY: Judge, do you want to try one more time?

THE COURT: This is a test. Would whoever's

monitoring please let us know whether we can be heard in the remote locations? Are we getting a yes?

COURTROOM DEPUTY: We are, yes.

THE COURT: All right. We are back on. Mr. Bienenstock.

MR. BIENENSTOCK: Sure. I think the most efficient thing for me to do now is I'm going to run through the 12 *Sonnax* factors and then briefly address the merits.

Factor one, whether relief would result in complete or partial resolution of the issues. As I was just explaining, a one-off determination that the judges' salaries can't be reduced, or pensions can't be reduced, would not be a complete resolution of the issue because you have the GO claims that say we get first claim to all available resources, no matter what.

So if the resources they say they have first priority to have to first go to the GOs, there's obviously a dispute. It would not resolve everything. And if the Court -- if there's one thing that is safely predictable, it's that everyone is going to have a reason why their ruling doesn't mean that they come ahead of all the other creditors asserting priority for a variety of reasons.

Sonnax factor two, the lack of any connection with or interference with the bankruptcy case. Well, this is completely connected and interferes with the bankruptcy case.

It will interfere with the confirmation hearing.

And what's more, Your Honor, what if they're in the middle of their action in the Federal District Court or it's been resolved and it's on appeal and Your Honor is posed with priority issues at confirmation?

How does this Court now give deference to whatever has been decided in another court or what might be decided and reversed or affirmed on appeal? It would only create confusion and needless complexity.

Sonnax factor number three, whether the foreign proceeding involves a debtor. Well, that's inapplicable.

Four, whether a specialized tribunal has been established. Absolutely not. So that goes in favor of not terminating the stay.

Five, whether the debtors' insurance carrier has assumed full responsibility. Well, there is no insurance here to pay the judges' pensions, so that goes in favor of not giving stay relief.

Six, whether the action essentially involves third parties rather than the debtor. No, this most definitely involves the debtor. So in favor of the Board again, of not granting stay relief.

Seven, whether the litigation can prejudice the interest of other creditors. Absolutely, it could, for the reasons I've discussed. Reason not to grant stay relief.

Eight, whether a judgment in the foreign action is subject to equitable subordination. Well, no foreign action, so it's inapplicable.

Whether movant's success in the foreign proceeding -- this is nine -- would result in a judicial lien. Again, inapplicable.

Ten, the interest of judicial economy and the expeditious and economical determination of litigation for the parties. For the reasons I explained, it's much more efficient to do it in one confirmation hearing where everyone's priority claims are on the table, rather than in bifurcated proceedings where not everyone has a chance to be in both.

Eleven, whether the foreign proceedings have regressed. Well, again, that's inapplicable.

And 12, the impact of the stay on the parties and the balance of hurt. Your Honor, there, I think, the fact that virtually every factor that was applicable -- every factor that was applicable was in favor of not giving stay relief shows that the balance of hurt suggests that the stay should not be modified.

Now, Mr. Indiano mentioned that he thinks it's sort of a distinction without a difference that we said that if the pensions are reduced, it would be the Court doing it and not the government. And I just want to explain why it's -- it's

most definitely a distinction with a difference, and that's why we said it.

And we didn't say it to put the onus on Your Honor either. We said it because the Supreme Court said it in the *Bekins* decision. There, which was one of the first tests of Chapter Nine after the Supreme Court had ruled the first Chapter Nine was unconstitutional in *Ashton*, the issue again came up.

How can a city, a municipality, avail itself of a bankruptcy discharge without running afoul of the notion in the Federal Constitution that states can't impair contractual obligations? And the answer that the Supreme Court gave is the state, the municipality is not doing it. It's the Federal Court that's doing it. And that's the reason why we made that distinction. It had -- go ahead, Your Honor.

THE COURT: It seemed to me that Mr. Indiano's arguing here today that even the Court would not have the power under PROMESA to alter the judicial pensions; that by making the basic specification that the Puerto Rico Constitution has to embody a republican form of government, Congress has implicitly decreed that only Congress itself could invade judicial independence, the compensation element of judicial independence here in Puerto Rico.

MR. BIENENSTOCK: Well, the answer to that, Your Honor, is that Congress wrote in Section Four of PROMESA,

that PROMESA, quote, Shall prevail over any general or specific provisions of territory law, state law, or regulation that is inconsistent with this Act, end of quote.

So Congress responded to Mr. Indiano and said, we are passing this federal law that will allow you, among other things, to impair contractual obligations throughout the territory, and it prevails over any inconsistent territory law, of which the Puerto Rico Constitution is one.

Now, I'll wrap up just with the most basic observation on the merits, Your Honor. Movant starts with judicial independence and the republican form of government. We respect both principles. No issue. But the dots are not connected.

They're saying somehow that by a debt restructuring dealing with the inadequacy of funds to pay all debts in full, that if you reduce a judicial pension, the judge will no longer be independent. We reduced the legislature's budget by ten percent last year. They challenged it in this court. The Court ruled in favor of the Oversight Board. It was appealed to the First Circuit. The First Circuit affirmed.

The -- we have to do what we have to do to deal with the truism that we don't have enough money to go around. It would be one thing if the Puerto Rico legislature or the Governor were saying, I don't like some judicial decisions that have come down in Puerto Rico courts lately, so I'm going

to lower the judges' salaries. That's not what's happening here. What's happening here is there is a global discount of debt because we don't have enough to go around. It doesn't -- there's no logic showing why that impacts independence.

And as Mr. Indiano knows, because we've shared with him the cases, the jurisprudence in the Federal Courts, when challenges to changes in judicial salaries have come up, is that as long as the judges are not being targeted, there's no impact on their independence. And there's no -- and they haven't made a suggestion here that they're being targeted. And of course, we would never do that and we haven't done that.

So again, finally, we haven't decided how we're going to treat their pension claims. We appreciate what they do, who they are, their arguments, but to isolate that one issue and to send it to another court, albeit a federal court, when not all the parties affected by the impact would be there to be heard, and it could certainly complicate a confirmation hearing, you know, that, with all of the *Sonnax* factors I mentioned, I think makes fairly clear that this is not a good situation for stay relief.

THE COURT: One question for you before Mr. Indiano comes back. You said that there hasn't been a decision made as to how to treat these judges' pension claims. I think I heard Mr. Gordon this morning saying that the deal with the

Retiree Committee includes alterations to the Judicial Retirement System. So is that something separate?

MR. BIENENSTOCK: Yes. And Your Honor heard correctly and it is separate.

We're anticipating, not in concrete, but we're anticipating that there's going to be a class of retirees, and that's what Mr. Gordon was talking about this morning. But movants, our understanding is that movants are active judges who are concerned about what happens to their future pension, and that is a separate class. And we haven't made a final determination on that.

THE COURT: Thank you for clarifying that.

MR. BIENENSTOCK: Thank you.

MR. INDIANO VICIC: Your Honor, in response to your question, Mr. Bienenstock cited parts of PROMESA. He didn't talk about overriding Congressional mandates regarding the creation of Puerto Rico's system of government. They were hoping to form a government -- he mentioned territorial, state regulations. None of those are Congress, so that was completely unresponsive to your question.

THE COURT: Well, his point, as I understood it, is that Congress may have made specifications for the Puerto Rico Constitution, but Congress very specifically said in PROMESA that PROMESA can override any law that is the law of the territory, and there's no reason not to consider the

territory's Constitution, which was developed here, a law of the territory.

Is that a fair summary, Mr. Bienenstock?

MR. BIENENSTOCK: (Nodding head up and down.)

THE COURT: He's nodding yes.

MR. BIENENSTOCK: That's perfect, yes.

THE COURT: He said it was perfect. Thank you. I get a gold star.

MR. INDIANO VICIC: And that shows the problem here. We are not talking about the Puerto Rico Constitution. We're talking about what Congress required to be created in terms of the form of government, republican form of government.

We're a step above the Puerto Rico Constitution in a sense, and I don't mean that in a superiority sense, but in terms of entering into a legal analysis, we're talking about what Congress did when it mandated a creation of a form of government of Puerto Rico, a republican form of government, not a separate law.

It said whatever you come up with, it has to be this. And you can't -- the laws that they're talking about in the Constitution, that's why when we start -- immediately I started hearing about bond claimants, they're trying to put judges in this basic argument, which is the form of government, on the level of a Puerto Rico constitutional claim. That's not really what we're talking about. We're

talking about what Congress did in the creation of what we have in Puerto Rico, and the requirements that this be a three-part separated powers of government, with judicial independence as an inherent quality of the judicial branch.

That's where the analysis gets off track, because they keep trying to drag us into this analysis. You're like everybody else. You have to compete at a confirmation hearing. That's not what we're talking about. We're talking about Congress stepped in before all that and created something which has not been undone by PROMESA anywhere.

THE COURT: Well, there will be other people who will want to compete with that proposition, and so that is one important consideration of the forum in which this debate should occur.

MR. INDIANO VICIC: It's difficult to imagine an entity that's going to be able to compete given -- on that historical basis, on that legal basis from a mandate of Congress.

THE COURT: You may think you have a slam dunk, but due process demands that other people who want to challenge that proposition be able to challenge it in a way that everyone who was concerned can be bound by the results.

MR. INDIANO: Everybody has told me, whatever this is, it's not a slam dunk. I know it's a difficult and unique, perhaps, perspective, but that doesn't mean it's not correct.

I'm just trying to shift the argument to where I think it has to be with respect to what Congress created when it established whatever we have here in terms of form of government.

So I understand the desire to put us on some kind of level where we're just competing with equal components of this process. That's not what Congress created. And we talked about in the -- I understand the --

THE COURT: I'll need you to wind up.

MR. INDIANO VICIC: Yes. I'll just wind up with the issue of who's pushing the changes. We already know -- and Judge, I think you picked up on this. They say they don't know what they're going to do with the retirement of the judges. They have already essentially cut a deal with one group of retired judges, and we're the active judges. So it's still disingenuous to say they don't know what they're doing.

They're going to have to try to force cuts in the pensions. And they want us to connect the dots, how do pensions effect judicial independence. There is a plethora of case law describing how that has affected, going to the *Booth* case, United States Supreme Court, and tons of other cases.

So that is to be seriously questioned. Any effect on judicial compensation is an attack on the independence of the judiciary, and that's established by case law.

Thank you very much.

THE COURT: Thank you.

And I thank both counsel for these arguments, and I will take this matter under submission.

MR. INDIANO VICIC: Thank you.

THE COURT: The next Agenda item is Roman IV, number 16, the Motion for Relief from Stay of the AMPR.

MR. BARRIOS RAMOS: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. BARRIOS RAMOS: Counsel, Jose Luis Barrios in representation of Asociacion de Maestros de Puerto Rico and its union, Asociacion de Maestros de Puerto Rico-Local Sindical.

THE COURT: Good afternoon, Mr. Barris Ramos.

MR. BARRIOS RAMOS: Your Honor, we are pleased to announce that AMPR and the Oversight Board have reached an agreement in principle regarding the settlement that we, in our view, will address in a complete form, the teachers' relief or request for relief in the Motion for Relief of Stay.

As part of this settlement agreement, in principle, the AMPR and the Oversight Board have identified a mechanism to complete the payment of this unused, accrued sick leave to the teachers that retired on or about the summer of 2017 and were impacted by Law 26. However, at this point, we will need the Government's cooperation to implement this mechanism.

We are hopeful that given Mr. Friedman's earlier

statement in court, that it's the government's position to protect all its pensioners, that their cooperation will come in an immediate basis.

Besides that, Your Honor, I believe that it is the position of the AMPR that this settlement agreement in principle is a win-win situation, like Mr. Bienenstock mentioned earlier, referencing other agreements that unions have reached with the Oversight Board. And we will have nothing further.

I think counsel for the Oversight Board --

THE COURT: Thank you.

Good afternoon, Mr. Possinger.

MR. POSSINGER: Good afternoon, Your Honor. Paul Possinger of Proskauer Rose on behalf of the Oversight Board.

I can confirm what Mr. Barrios has said. We have reached an agreement with respect to how to handle the underlying claims that relate to this motion and that will result in the disposition of the motion itself.

We are awaiting confirmation from the government that they will cooperate with the settlement payments themselves. That has not yet occurred. We think that is the last detail to iron out. Once that happens, we should be able to implement this.

And then counsel had mentioned to me that you may request a status report on this, or that we might agree to

submit a status report before the next Omnibus to inform Your Honor as to where this has ultimately come out.

THE COURT: Yes. So shall I mark this, put over to the July 24th Omni with a status report to be filed by July 17th at the latest?

MR. POSSINGER: That works for us, Your Honor.

THE COURT: Thank you.

MR. POSSINGER: Thank you.

THE COURT: Mr. Friedman.

MR. FRIEDMAN: Your Honor, Peter Friedman on behalf of AAFAF. Again, you know, I mentioned this to Mr. Possinger and I mentioned this to labor counsel, at this point, the government -- I certainly don't have authorization or client authorization to indicate what the government's going to do.

The government has been put in a position where the Board has said here's a new expense to pay --

THE COURT: I'm sorry. I need you to talk a little louder. Thank you.

MR. FRIEDMAN: Sorry, Your Honor.

Where the Board has said pay something, but hasn't said where does that money come from, does something else get cut -- we know they want to do this in furtherance of the agreement they signed this morning, and there are parts of that agreement that may be appealing, but we've expressed our concerns already about some of the overreaching aspects of

that.

So obviously we will cooperate in terms of providing a status update, but again, I want to be clear and not leave a misimpression by silence that AAFAF and another department of the government has authorized this payment in light of sort of the circumstances and the uncertainty about where the money's going to come from, what other funds may be, you know, impinged upon or impeded by doing this, and sort of the absence of a clear direction as to how that works out.

And like I said, we will participate in providing any necessary information for a status update in a timely manner.

THE COURT: And I assume that you will participate in discussions in between, to the extent there can be clarity in some agreement reached as to the fiscal impact of this agreement and sources of funding?

MR. FRIEDMAN: Yes, Your Honor.

THE COURT: All right. I think that's the most that can be asked at this moment, and I hope that there will be some progress and clarity one way or the other. And I will look forward to the July 17 status report.

MR. FRIEDMAN: Thank you, Your Honor.

THE COURT: Thank you. And I thank you all.

And so that takes me through Roman IV on the Agenda, and I will turn the bench over to Judge Dein for the items at

Roman V. And then I will return for the items at Roman VI. Thank you.

HONORABLE MAGISTRATE JUDGE DEIN: I'm authorized for a seventh inning stretch.

MR. DESPINS: Good afternoon, Your Honor. Luc Despins with Paul Hastings on behalf of the Committee. And I'm going to handle -- there are three motions for stay in the three different cases, but I think it makes sense to handle them all together.

HONORABLE MAGISTRATE JUDGE DEIN: I think so.

MR. DESPINS: And I would like to reserve maybe five minutes for rebuttal at the end.

So the three motions seek to stay the proceedings that the Board and the Committee started together all around the time where the statute of limitations was about to expire in these three cases.

And just to give you a sense of magnitude, Your Honor, there were 26 adversary proceedings that were filed in these three cases, 1,500 defendants, more or less. In the Commonwealth case, there were GO clawback actions, eight of those adversary proceedings against 752 defendants.

There were also GO lien challenges where the Board and the Committee said the GO holders are not secured creditors. Seven different adversary proceedings there against 368 defendants in the ERS case. There were only

clawback actions. These are actions to get back the money that was paid to the holders of ERS bonds. Seven adversary proceedings against 235 defendants.

And finally in the HTA case, there was only a lien challenge, four different adversary proceedings against 143 defendants.

Since we filed the Motion to Stay -- the motions, plural, to stay, there were obviously objections filed, and we'll address that in a minute. But also I wanted to mention to the Court, because I'm not sure you know, that FGIC filed an answer in the HTA -- I see you're nodding so, therefore, you know about that.

HONORABLE MAGISTRATE JUDGE DEIN: You answered that on --

MR. DESPINS: And also there was a motion to dismiss filed by a group of GO bondholders to the lien challenge as well, so I wanted to tee that up.

So the first, easiest part, Your Honor, is the Motion to Stay in the ERS case. We believe that is unopposed, so we would -- we'll submit a separate form of order, if Your Honor is agreeable, but I wanted to put that aside.

HONORABLE MAGISTRATE JUDGE DEIN: I agree. Let's put it aside.

MR. DESPINS: Okay.

HONORABLE MAGISTRATE JUDGE DEIN: I think whatever is

sort of agreed with the others, we'll go along with that.

MR. DESPINS: So now let's deal with the others. And what we said in the Motion to Stay is that we wanted an extension of time to serve the various complaints on these 1,500 defendants. And that regardless of that, we thought that there should be a stay of the proceedings.

We raised a number of issues, and I'd like to address some that were not addressed as well, looking back, as they should have. But one of the points we made is that there is already litigation, for example, in the ERS case, as to whether bonds are valid or not.

If that litigation produces a result, why, good or bad, why bother the people in the clawback until we know the outcome of that underlying litigation? So that's one reason to stay the service of the complaints on the clawback. And generally that applies to the clawback.

I would say that the most disruptive type of action that we can take is serving the clawback actions, because you're telling people that got money three years ago that they have to give it back. And that is cause -- it's not the issue of using a first-class stamp and mailing the Complaint to the person. It's what comes back after that. That is going to engender a lot of legal fees and costs to deal with the trauma that that will cause.

I would say the main focus is on the clawback, and

also there's a reason to stay the clawback, which is that there's an underlying action that relates to the clawback. Let's see how that action turns out before we, you know, disrupt the various people that are the targets there.

And the other point to be made is that -- is again, it's not only the service of this. Of course we can serve the 1,500. We can put as many people as needed on that. That's not the point. We don't need until necessarily November to do that, but it's everything that will be caused by the service, service at different times, you know, coordinating all of that.

HONORABLE MAGISTRATE JUDGE DEIN: Your papers say that you needed the time to -- you have two separate issues, right? You have service and then you have the stay of litigation?

MR. DESPINS: Correct.

HONORABLE MAGISTRATE JUDGE DEIN: But your papers were pretty clear, I thought, that said you wanted the stay for service for really administrative reasons.

MR. DESPINS: Correct. I'm getting to that.

So one of them is you have to coordinate service, because people are served at different times. Their time to answer runs -- so there's a whole coordination effort. But on top of that, it's the issue of -- and, you know, I think when we got approval to do this in New York, I remember Judge Swain

looking at me and saying -- there was a reference to some circus. I forget if it's -- but basically saying, look, you're doing this because the statute of limitations is about to expire.

The answer is yes. I fully expect that what's going to happen after that is an effort to resolve all of this rather than having -- and I forget the expression. That's where the circus analogy came in. But I fully expect there will be efforts to settle all of this rather than litigate in 39 different directions. I think that was the analogy that was used.

And that's part of it as well. Mr. Bienenstock says that he thinks he will file a plan or may file a plan in the next 30 days or so. That will deal with a lot of the issues, I would say with 99 percent of the issues that are built into these complaints.

So it does make sense to see whether these issues can be settled or not before we go all out and start dealing with 1,500 defendants, and the motions to dismiss, motions for summary judgment, motions on the pleadings, et cetera, et cetera. We're happy to do that in a sense. We can do it, so it's not an impossibility. But from a case management point of view, we don't think that makes sense.

Now, obviously, does it have to be November 1st? No. It could be -- you know, I understand their concern, which is

hey, if there's a plan that's going full steam ahead while I'm stayed here, that's not good. But there's a safety valve in the Order that says they can move to terminate the stay and the Court for good cause can terminate the stay.

So there is a safety valve, and that is one of the biggest arguments here, which is what is the prejudice to them. Yes, nobody likes a stay, but there's a very precise safety valve that says that either the plaintiffs or the defendants can terminate the stay.

The defendants have to show good cause. I don't think that's a -- we didn't try to define what good cause is because that could take weeks to agree with everyone as to what that means. But the point is the Court has a lot of discretion.

And that's where I started with this, and I would end with this: There is no point in me arguing a lot about this because it's completely within your discretion as to whether it should be a stay or not. We think it makes sense, but if Your Honor doesn't think it makes sense, then we'll operate accordingly. But I think the Court has a lot of discretion in giving us more time to serve and on staying the litigation generally.

HONORABLE MAGISTRATE JUDGE DEIN: All right. But just clarify for me why you think you shouldn't serve as opposed to just -- because clearly you can serve an order that

says, I'm serving this, the litigation is stayed. There's no answer due for 30 days until after the stay is lifted.

MR. DESPINS: We can serve. I would just say that in the context of clawback actions, it causes a lot of trauma because we're telling people that -- it's one thing to say that you're not going to get paid or you're going to get paid 50 cents on the dollar. It's quite another to tell people on top of that, you need to give back X millions of dollars that you received three years ago.

So that's why in the clawback context, we would really urge the not serving until there's greater clarity, because depending on what happens with the Plan, it may be that these actions are never pursued to completion. So why, you know, inconvenience these people and cause all this -- because I know, I know what's going to come back because I already receive calls from some of these people who want to get me disbarred and all that.

So I'm telling you that there's a lot of agitation over the clawback actions. So if we cannot serve those folks, I think that would aid in the process.

And the lien avoidance, we can serve. It's just that I believe the Plan will address a lot of these issues, so why not see what's behind door number one, which is the Plan. We may not like it, in which case we can go forward, or people may think it makes sense to settle it.

HONORABLE MAGISTRATE JUDGE DEIN: Let me ask you, in the Proposed Order that you had that you wrote that the plaintiffs themselves could decide to go forward without Court approval, what's the rationale behind that?

MR. DESPINS: Well, because it's -- we're happy to make it subject to good cause. We're happy to make it -- I thought we had fixed some of that, but we're happy to make it completely parallel, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: All right. All right.

MR. DESPINS: All right. Thank you.

MR. STANCIL: Good afternoon, Your Honor. Mark Stancil from Robins Russell for the Ad Hoc GO Group.

I'm going to try to cover some of the issues that I think are common to several of the actions, and my colleagues will address additional issues as well. So I won't cover all the waterfront, but I'll try to hit the main ones.

Let me start, if I may, with what I gather has now been abandoned, which is the idea that these Complaints cannot be served. I would refer the Court to paragraph 20 of the motion which says that claims that good cause exists to extend the service deadline, because serving all domestic defendants within 90 days would be difficult, if not impossible -- I take it that is no longer the assertion. And so with -- I hate to beat a dead horse, but let me just --

HONORABLE MAGISTRATE JUDGE DEIN: I'm with you on that.

MR. STANCIL: Okay. Let me add one point in particular that's specific to the lien avoidance action. There's a lien avoidance and clawback. On the lien avoidance action, their Complaint alleges an address for each defendant because everybody had to file one proof of claim. So it's a question of sending out 400 first-class envelopes.

Perhaps they need an order of the Court to say that the proof of claim address suffices for service, but I think they will get certainly consent from everybody here at our table today. We think that should be done immediately. We don't think there's any justification, certainly no good cause.

The suggestion was made that there is -- this is a modest form of relief. Respectfully, we disagree. We've been trying to get clarity as to our liens for two years. We actually filed a declaratory judgment action in June of 2017, which the Oversight Board and others claimed was not ripe. They were correct in the judge's view and in the First Circuit's view, which was affirmed, but now it's clearly ripe because they've moved to avoid our liens. We need this resolved.

Mr. Despins says, well, we should wait for the plan of adjustment, but we know they contest the liens. We know,

therefore, I assume we can infer, that a plan of adjustment will not give us credit for the liens. Waiting to see a plan, the premise of which is that there is no lien, doesn't accomplish anything. We need to get this done.

There's another suggestion made that -- well, the claim objection that's been filed against certain of the bonds would obviate the need for the lien avoidance action. That's both wrong and inefficient.

Let me tell you why on each count. It's wrong because there are certain bonds that they have not objected to for which a lien claim has been asserted, so whatever the result of the claim objection, the Court will still need to address the lien issue with respect to the as yet unobjected to bonds.

But let me tell you why I think it's just a bad idea as well. We're going to need clarity as to the status of those claims. Their assumption is, which we respectfully disagree with and hopefully we'll get around to getting in to Court to prove it, but their assumption is, well, they'll win the claim objection.

My assumption is they're going to lose it spectacularly, and then we're going to need to come in and say not only do we have claims on all of these challenged bonds, but they are secured claims for the reasons that we've outlined.

We have outlined them in a Motion to Dismiss that we and the Ad Hoc Group of Constitutional Debtholders filed yesterday. These claims have been well explained. There's no efficiency gain except to roll the dice and hope that they can get out from some of their bond claims before having to address the lien claims, with respect to the remainder. We should just get on with this and not have a six or 12 month delay baked in at the end of the claim objection.

HONORABLE MAGISTRATE JUDGE DEIN: Let me ask you this. I think you filed two motions to dismiss last night, right? Or was it just one?

MR. STANCIL: I intended to file, I think we intended to file only one --

HONORABLE MAGISTRATE JUDGE DEIN: I thought it was two different groups --

MR. STANCIL: We filed with the Morrison & Foerster firm, a joint motion.

HONORABLE MAGISTRATE JUDGE DEIN: Okay.

MR. STANCIL: And there may have been, if I have my facts straight, a corrected version filed that had to do with the signature block.

HONORABLE MAGISTRATE JUDGE DEIN: Among the late night filings.

MR. STANCIL: Well, we weren't noticing it for this Omnibus Hearing. I want to be clear about that.

HONORABLE MAGISTRATE JUDGE DEIN: Okay. My question is whether it makes sense to take some time to try to figure out how to bring it in a uniform manner to the Court to have these issues resolved, as opposed to having hundreds of -- or even five or six or seven different motions.

And that, to me, is why it might make sense to stay this for a finite period of time. I think everybody's now agreed that it's certainly -- an indefinite stay doesn't make any sense, but I'm trying to figure out whether it makes the most sense to do a finite stay within which period -- first of all, anybody can move to lift the stay if they think their issue is of critical importance. But it's also a time when some plan for bringing it before the Court in a unified fashion can be developed.

MR. STANCIL: We certainly don't oppose a unified briefing schedule for the core legal issues, because that's what we have long sought. But may I suggest, what they're trying to do, and we see this with the shift in positions today, they're trying to play out every day of the 90 days of service, plus some extra, plus a -- they're just slow-rolling this to death.

What I would submit is why don't we give them a deadline to serve that's maybe even a little ambitious. How about July 15th they serve, and then we'll have a Motion to Dismiss due 30 days after that? We can all get on a common

schedule.

I've already filed my Motion to Dismiss, and everybody is free to look at it as they want. We're all for that. But what we're hoping to avoid is this shifting rationales, let's wait for the plan, let's wait for this, let's wait for this. Let's get to court.

They've built this entire process, the plan, on claim objection, lien objection, litigation, litigation, litigation that they filed, but they are running like mad from having to answer any of it and we need to get on with it.

Some people are in the room negotiating this behind the scenes. We are not. They will not talk to us. They will not talk to many others. You will hear this from others as well. So I can infer from that what's going to be in this plan in the next 30 days.

We need to get this thing in court. They've chosen the litigation. We've got to get it moving. So we are all for a unified deadline, Your Honor, but let it be soon so we can actually get this done, instead of just teeing up two years of litigation that starts some indefinite form in the future.

HONORABLE MAGISTRATE JUDGE DEIN: Do you know when the original service deadline was?

MR. STANCIL: I think it was May 2nd, so I think -- I'm not supposed to do math on the fly, but August 1. July

31st. Somewhere in the late July, early August timeframe.

So if they could even get service done by that deadline, I mean, I think we could have motions to dismiss due on a standard deadline and we'd be just fine.

May I just briefly address one other point, Your Honor? With respect to the clawback actions, there are -- and this is a problem that we have in this case that we're trying to resolve. There are clawback actions filed against challenged bonds, bonds that are already the subject of a claims objection.

We're fine in staying the clawback portion until they've litigated the claim objection that they've filed, but there are other bonds, the PBA bonds in particular, and the 2011 GOs that the UCC has objected to and the Oversight Board has not yet objected to. They filed a clawback action against those bonds.

Count I says these bonds are all invalid, and the counts that follow are premised on that. We need that to be moving forward as well. So that's why we've objected to any stay of those clawback actions insofar as they are challenging additional bonds, but we're all pretending that they haven't.

So I don't know what else to say except the bonds are either null and void in their view or they are not, but we can't have it both ways. And we need -- again, they're the ones who filed all the lawsuits. Let's start getting it

moving, these questions, and get some answers and get this case over with.

HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

MR. STANCIL: Thank you, Your Honor.

MS. MILLER: Good afternoon, Your Honor. Atara Miller from Milbank on behalf of Ambac. I don't want to rehash territory, but I do think this is an important juncture to make the point that what we're seeing here is really a continuation of the strategy that the Oversight Board has adopted since day one of these Title III cases. Namely, push everything to confirmation; put a plan; get some small, impaired accepting class, and steamroll everyone else. Put everything into a massive confirmation that cannot be heard.

Mr. Bienenstock earlier this morning made a representation about using mediation to facilitate settlements and have a colloquy after that with Judge Swain where Judge Swain said, I'm going to take you at your word that you're going to use that.

I take Mr. Bienenstock at his word, but I listened very carefully to what he said, and what he said was we're going to file a plan. And for those of you who didn't sign on because you weren't included in the discussions and because this door was slammed in your face, then after the plan is filed, you can come in and talk to us about it. Then we'll go to mediation and we'll try to get you on side with a plan

that's already been proposed.

From day one, creditors have been standing here trying to get declarations, trying to get other adjudications about their rights, about their property interests, about their liens. The answer has been, they're not ripe. They're not ripe. You can't listen to it.

In HTA in particular, one of the critical pieces of their argument with respect to ripeness was well, you can't bring a claim related to whether or not the fiscal plan effects a taking because the fiscal plan is just a blueprint.

I reviewed a number of transcripts from the fall of 2017, the summer, fall and winter of 2017 in front of Your Honor, oral argument in front of Judge Swain, and oral argument to the First Circuit. The Oversight Board consistently took the position that the fiscal plan is a mere blueprint with no legal effect.

There was a determination, Judge Swain's Order dismissing our Complaint related to clawback, and HTA relied on that representation by the Oversight Board. Now they file a motion that not only says that the blueprint actually has binding legal effect, but that the fiscal plan and the budgets actually reorder priority and can negate liens.

That's an issue. If they're going to throw out grenades, they have got to pull the pin and litigate it. They cannot throw a grenade, attach it to a trigger and put in a

motion that says we litigate when we feel like it. There has to be some resolution and some determination.

This is not -- you know, Mr. Bienenstock argued in connection with respect to the second to last Lift Stay Motion that, you know, there are going to be a lot of people arguing about priorities. We're not arguing about priorities. We're arguing about property rights.

This is like COFINA. These are the core fundamental threshold questions. Is the money, even the Commonwealth's, to be dealt with in a plan? This is not saying the Commonwealth has a fixed amount of money and we're going to fight about who has a right to it.

We are entitled to litigate whether or not the money that the Commonwealth is going to deal with -- and for the Court to address in the Plan, whether it even belongs to the Commonwealth or does it belong to the revenue bondholders. Does it belong to the instrumentalities to which that money was transferred by statute?

HONORABLE MAGISTRATE JUDGE DEIN: As it now stands, where do you see these issues being resolved? Some have been brought in various places. What's your overall view of the path of these issues?

MS. MILLER: I think they should be litigated in stand-alone cases where the property interests can be addressed appropriately, and then you take that, once you

define what the property rights are, and you put out a plan.

HONORABLE MAGISTRATE JUDGE DEIN: But who participates in those cases? Is it all of the bondholders? How do you --

MS. MILLER: I don't think all of the bondholders -- I don't think unaffected bondholders need to participate in litigating over some of the threshold legal questions about property interests, right? It's either the Commonwealth's property or it's not.

I expect that both the UCC and Oversight Board, and potentially even AAFAF, will come in and adequately represent the interests of those who say it's the Commonwealth's property. If people want to intervene, they wouldn't even have standing to intervene.

HONORABLE MAGISTRATE JUDGE DEIN: But who would be the parties -- they're serving hundreds of people with these adversary complaints. Does everybody have the right to come in and raise the same defenses that you want to raise?

MS. MILLER: Well, I think it depends what box you're in, right? So they're filing against different boxes. No, I don't think a GO creditor has standing to come into the HTA box and argue about anything.

HONORABLE MAGISTRATE JUDGE DEIN: Right. But do all of the HTA, or do all of the GO? I want to make sure that everybody gets an opportunity to weigh in once or twice --

MS. MILLER: Right.

HONORABLE MAGISTRATE JUDGE DEIN: -- as opposed to hundreds of times.

MS. MILLER: So I think everybody does have the right to weigh in and should be given that opportunity, which is why I think Mr. Despins already said, service isn't the issue. In HTA in particular, there are only 143 defendants and they know who we are.

I think all of us should be served, and then there should be -- I don't dispute that there should be some coordinated schedule and some process put in place for trying, to the extent possible, to coordinate the briefing. That doesn't require an extended stay. It requires service, you know, at a minimum, according to the rules and on the schedule provided for under the Federal Rules.

And then, you know, the ordinary briefing with an expectation and maybe guidance from the Court about what you would expect in connection with briefing. I mean, certainly that's what's happening with respect to PBA, and I think it's working effectively.

HONORABLE MAGISTRATE JUDGE DEIN: And apart from these actions, so we have the claims objections, which are raising some of the issues. Where else are they being raised? Is it -- what's your understanding as to whether or not any of these issues are on a path to be resolved?

MS. MILLER: Well, our view, I mean, we filed a Lift Stay Motion, or our position is we don't have to lift the stay because the stay simply doesn't apply with respect to PRIFA, which is not directly addressed, but raises a number of the same issues in terms of whether or not the statutes that transferred certain revenue streams to instrumentalities transferred property interests, such that those revenues are no longer property of the Commonwealth.

So that's one avenue. And certainly they're currently up on appeal with respect to HTA in the First Circuit. The First Circuit hasn't ruled. The -- Assured's decision with respect to special revenues is subject to reconsideration, but ours addressed much more broadly all of these issues and whether or not, A, put them to the First Circuit but also argued that in the event that the First Circuit didn't want to, at a minimum, we should get a declaration that we're free to pursue those claims. In state court, we're awaiting decision. Oral argument on that was in January.

So I think there are other places where these would be litigated. And I'm not suggesting that they can't also be litigated in front of this Court. Right. So if we want to start a process, we can do that. I just don't know why everything has to be dealt with in the context of confirmation.

These are threshold questions that define what you can put in your plan. I mean, if COFINA had to be decided before we could turn to the Commonwealth, the issues of the revenue bonds also need to be decided before we can get to a Commonwealth plan.

THE HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

MR. CALLEN: Good afternoon, Your Honor. Jason Callen from Butler Snow, here on behalf of Financial Guaranty Insurance Company.

I just want to address, within the context of HTA, some of the questions that you've been having back and forth with colleagues of mine here at the counsel table. Specifically looking, in the context of HTA, do you need a stay for some type of management purposes?

As you heard from Ms. Miller, we've got only 143 defendants in those cases. They're all -- there are four lien avoidance actions in HTA. That's it. Four lien avoidance actions.

They all raise pretty much the same -- exact same arguments in their complaints. Those can be easily managed. The summons can be served. Parties can get together and we can enter into an appropriate case management order that can tee those issues up. So I don't believe that any stay is necessary for management purposes.

Then the next question would be is a stay required in

HTA for resolution purposes, whether because there will be a resolution through settlement or resolution through other litigation?

Well, I can tell Your Honor we feel very confident there's not going to be a resolution through settlement or something through the plan of adjustment, because as Ms. Miller already laid out, the Board has made clear, and all the plaintiffs through this Complaint that they filed in HTA, that the plan of adjustment is going to declare that the funds that are in dispute in the HTA cases belong to the Commonwealth, that they don't belong to the HTA, and that there are no valid liens held by the bondholders.

We know that that's coming. We don't need to see a plan of adjustment, because the plaintiffs have said that those are coming down the line because of the fiscal plans that have been certified and because of the budgets that have been certified. While we heard earlier those weren't written in stone, they now say they are written in stone and that those will dictate the plan of adjustment.

So there is no settlement. We haven't been contacted, as we noted in our papers, about any possible settlement all this time. Well, we have, as others here at counsel table have been talking about seeking some type of declaration, some order from the Court as to the validity of our liens.

So these over here -- we hear a lot in this Court about gating issues. The validity of these liens, who owns this money, in -- these are gating issues that have to be decided in litigation before this Court. And the appropriate way to do it is in this litigation that has actually been filed, is now pending, and that we have also answered and filed a counterclaim and third party claims that address the specific provisions of PROMESA and other applicable laws that show that those liens are valid.

I also would say, Your Honor, that there really isn't any other litigation where we can be assured that these issues raised in the complaints in HTA, and in our answers and counterclaims and third party claims, where we can be assured that those issues will be decided.

Yes, it's true that there were adversarial proceedings in HTA that were seeking access through special revenue provisions under the Code incorporated through PROMESA. That is currently still up on appeal in the First Circuit. But it is highly likely that those decisions that will ultimately be rendered by the First Circuit will not decide the core issue of whether the liens are valid and who owns the funds here that are in dispute.

Judge Swain did -- specifically did not decide that issue when she granted the defendant's Motion to Dismiss in that case, and the First Circuit specifically didn't decide

that issue. So there's no outstanding litigation where those issues can be resolved.

So for those reasons, we would say there shouldn't be a stay. The plaintiff should get on with serving summons and complaints. And then we should agree upon or try to reach an agreement upon an appropriate case management order so that this litigation can proceed.

The one thing, and I'm hesitant to even mention this, Your Honor, but just because it's my one opportunity to get in front of you, although we strongly believe there shouldn't be a stay, if there is a stay, we have filed, as you know, a counterclaim, but also some third party claims, a limited number of third parties that we have included with our claims. And we would like, if there is any stay that's entered, we would like it to be clear that we can still serve copies of the Summons and our third-party claims on that limited number of individuals so that we don't run into any 90 days issues or anything of that sort.

And if Your Honor has no further questions --

HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

MR. NATBONY: Your Honor. Good afternoon, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: I think we're at 1.5 or something.

MR. NATBONY: I think I asked for one, but I'll take

1.5. I'm William Natbony from Cadwalader representing Assured.

Your Honor, Assured looks forward to getting to these important issues as quickly as possible, but obviously would participate in any common management plan or briefing schedule that the Court issues to coordinate this.

In my one minute now, I just wanted to point out that in our limited objection, we pointed out to some language in the proposed orders in the three motions that still provides that the plaintiffs, as a whole, can cause any stay to be lifted at their option without making a showing of good cause. And whereas any single plaintiff or defendant would not have to show -- would actually have to ask for and get good cause.

So in the interest of uniformity, we would hope that that language would be adjusted in paragraphs three and four to allow for anyone, whether it be a single plaintiff, a single defendant, or all plaintiffs to actually make an application and show good cause to lift any stay that Your Honor orders. Thank you.

HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

MR. ZOUAIRABANI TRINIDAD: Your Honor, if I may. Attorney Nayuan Zouairabani of McConnell Valdez representing AmeriNational Community Services, LLC.

We have requested three minutes to speak, but it seems some of my colleagues have taken some time. I would ask

you to grant us the indulgence to at least have some time to respond on our limited response.

HONORABLE MAGISTRATE JUDGE DEIN: Go ahead.

MR. ZOUAIRABANI TRINIDAD: Thank you, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: I think we've given a joint extra three minutes.

MR. ZOUAIRABANI TRINIDAD: Thank you, Your Honor.

Your Honor, movants had two bites at the apple to try to meet their burden. They have failed each time. Under Rule 4(m), they need to show good cause. Good cause requires good faith and a reasonable basis for noncompliance to serve.

Now, first of all, that second prong, based on the representations that were made to the Court, have gone out the window. They just admitted that they can serve and they just need basically to get around to do that. So right now the good cause requirements for granting an extension under Rule 4(m) have gone out the window.

Second of all, they argue in their pleadings that the fact that they are involved in other Title III matters prevents them to handle these adversary complaints. Well, that is a predicament of their own creation. Movants specifically asked the Court to approve some procedures in order to pursue the Complaints the way they have.

Now, if that creates an issue, that is more akin to mistake or inadvertence and would not constitute good cause to

grant an extension under Rule 4(m). Movants also would not comply with permissive extension due to the fact of their failure to account for the prejudice that the extension would have on AmeriNat.

Now, Your Honor, AmeriNat did not ask to be sued. It was sued nonetheless, and it is ready to immediately respond and defend itself on the Complaints.

Now, during the presentations to the Court, movants argue that there's a safety valve in the procedures where the stay could be lifted if the defendants show good cause. Now, it is a little bit interesting, Your Honor, because those procedures, what they intend to do is invert the standard. It is movants who have the standard of good cause to get the extension, not the defendants who have the standard of good cause to get the stay lifted. Now, that should not proceed, Your Honor.

Finally, AmeriNat is in a very particular circumstance, Your Honor. Not only is it probably the largest creditor of HTA, it can easily be served. Now, with that in mind, Your Honor, I have to echo some of the things my colleagues have mentioned, which is that the movants decided to proceed with this, and at some juncture, they need to address and actually answer the Complaints or a motion to dismiss, or whatever responsive pleadings defendant chooses to answer. As they say in my neck of the woods, at some point

they either need to put up or shut up, Your Honor. So I believe that time has come now.

There is no basis for the stay. However, we would not be opposed to some joint prosecution for the litigation in order to have everything done orderly, Your Honor. And in that sense, even if the Court were to consider a stay, we ask that that stay be bifurcated. AmeriNat has very particular defenses and a unique situation, and any such stay would be prejudicial upon us, Your Honor. Thank you.

HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

MR. BIENENSTOCK: Your Honor --

HONORABLE MAGISTRATE JUDGE DEIN: Let me just make sure, are there any other opponents?

(No response.)

HONORABLE MAGISTRATE JUDGE DEIN: We're done. Okay. Go ahead.

MR. BIENENSTOCK: I had not been part of this, but I've listened and wonder if I could have a few minutes both to provide some information that might be helpful to everyone and to respond to some unfounded accusations that were made against my client.

HONORABLE MAGISTRATE JUDGE DEIN: Why don't you take a couple of minutes.

MR. BIENENSTOCK: Thank you.

In terms of the information that might help everyone,

we know that the GO holders have asserted liens against the property -- certain of the property taxes and the clawback revenues. We've disagreed with them, but we know they assert them, because they filed a Complaint that went up to the First Circuit.

While we disagree with them, in the plan we file, we're going to provide that they get property taxes and they get clawback funds, because we have to pay them out of something, so we might as well pay them out of the things they say they have a lien on first. So that might make some of the issues go away. I just raise it for that purpose.

And as far as the accusations that were made by Ambac, just three or four quick responses. I was shocked to hear about my client's -- the Oversight Board's strategy and intentions. I don't know where they got this from, but they ended up saying that we took some very small agreements with some small classes with the intent of ramming through a confirmation.

Well, how could anyone be so silly as to think that Judge Swain would ever let us do that? That's never what we wanted to do or intended to do, and that can never happen in this Court. When we file a plan, to the extent there are overarching issues, I've actually said it I think at prior Omnibus Hearings, we might ask Judge Swain to tee up some of the issues, such as clawback revenues, at the disclosure

statement stage, because we know they're overarching. They have to be resolved. We might ask to tee up the GO priority at that time, because we know it has to be resolved.

And everything should be done in an orderly, fair way. We know the Court will require it. We want it that way. The Board wants it that way. And all of the aspersions and accusations to the contrary, I don't know where Ambac got them, but they're just flatly wrong.

Second, Ambac voiced anger that when they raised claims in the past, we didn't let them be adjudicated because of ripeness. Two things about that. One is some of their claims are just false. They claimed the right to turnover under Sections 922 and 928. They lost. It was decided on the merits.

Before they could have it decided by the First Circuit, another litigant had it decided by the First Circuit and Judge Swain was affirmed. So they've gotten determinations on the merits on some of their most critical issues.

Number two, the claims that were dismissed were dismissed because this Court and the First Circuit found the Court did not have subject matter jurisdiction to proceed. I don't know if they're angry at the law, at Judge Swain following the law, the First Circuit affirming the law or the Oversight Board saying what the law is, but I -- where does

that anger come from? That was the law. The Court didn't have jurisdiction to decide things that they posed that they should have known in the first place. So it's just inexplicable to us.

The other accusations made -- I'm over time, so I'll just say we couldn't disagree more. But the Oversight Board is going to propose a plan and ask for scheduling that is fair to everybody and gets the issues resolved in the most efficient way. That's always what it intended to do and that is what it will do.

Thank you, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

MR. DESPINS: Just two seconds, Your Honor.

We think there should be a stay of some kind. It's okay to build into the stay a case management process. There's no problem with that. And we're also okay to start serving the lien challenge summons.

So we're -- where we have concerns is serving the clawback action, so I want to make sure that's not lost in this. But your proposal to have a case management process meet and confer, take place during that stay period, makes a lot of sense. There's no doubt about that. So I don't think --

HONORABLE MAGISTRATE JUDGE DEIN: There's nothing that you've asked for that would prevent you from serving, is

there?

MR. DESPINS: No.

HONORABLE MAGISTRATE JUDGE DEIN: I mean, you've asked for an extension of time to serve, so you're the one -- within at least the initial 90 days, are the one that's making the decision as to who to serve or who not to serve, right?

MR. DESPINS: Correct, but we don't want to let the 90 days pass without an order saying it's okay.

HONORABLE MAGISTRATE JUDGE DEIN: I understand that. I want to make sure that I'm reading your proposed order correctly. You're not saying you can't serve within that period. So if you're making a distinction between the clawback cases and the lien avoidance cases, there's nothing that stops you from serving the lien avoidance matters promptly.

MR. DESPINS: I think that's where the danger is, that I'm not in the weeds on that issue -- I think we have most of the addresses for the lien avoidance. I'm pretty sure of that. But I know for a fact we don't have all the addresses for the clawback actions, for example. And that's why I'm concerned about saying absolutely we can serve all the lien avoidance actions.

We certainly don't think we could serve the 1,500, which includes the clawback, within that 90-day period, because we don't have all the addresses for the clawback. But

I think nobody is really pushing the clawback, in terms of service, at this stage.

And in terms of lien avoidance, I want to leave myself a little bit of room in case we don't have all the addresses. I think we do, but I'm not a hundred percent sure.

HONORABLE MAGISTRATE JUDGE DEIN: All right.

MR. DESPINS: Thank you.

MR. STANCIL: Your Honor, may I make a constructive suggestion?

HONORABLE MAGISTRATE JUDGE DEIN: That would be good.

MR. STANCIL: May I suggest a meet and confer on -- I don't know what to call this, but the unification procedure, start right away, and we can report back to you hopefully with a proposal at the next Omnibus? Because as you're aware, in the selective claim objection, we're coming up to Boston in a couple of weeks to talk about when we can start the procedures on that.

It's been five months since they filed the claim objection. I don't want to see the same thing happen on this lien avoidance thing. So if there's going to be a meet and confer, let's get it started so we can meet and come back with something.

HONORABLE MAGISTRATE JUDGE DEIN: So what I'm inclined to do is say let's enter a stay until September 1st

as of now. Prior to that, in time for the next Omni, I will -- I'll enter an order shortly. I'll have to think it through, but it would require a meet and confer and a proposed joint case management proposal.

Before September 1st, parties can file motions for relief from stay, but it really will have to be sort of an emergency as to why you would -- why your issue needs to be decided before we can have a uniform scheduling plan. And I'm trying to figure out, as I'm sitting here, and I'm not doing a really good job of it, of how this schedule fits in with all of the other schedules that we're going to be discussing in Boston. And I find myself unable to do that standing here.

I have to admit I started today thinking that there was a real service problem with getting addresses, and apparently that is not the motivating factor for this motion, so I need to shift gears on that. But I think for planning purposes, right now I will enter an order that there is a stay of proceedings except for service as of September 1st -- up until September 1st.

I will enter an order requiring case management before that, with something to be addressed at the next Omni. And at that time, if this stay is no longer appropriate, within the case management order, we can revisit it at that point as well. But as I see it now, that's sort of not a great extension beyond the service period that's already in

place. Okay?

Somebody else needs to talk to me? Okay.

MR. KISSNER: Good afternoon, Your Honor. Andrew Kissner, from Morrison & Foerster on behalf of the Ad Hoc Group of Constitutional Debtholders.

Just a clarification. As Mr. Stancil said before, of the five motions to dismiss we filed last night, we're informed by our local counsel that there may have been an error with one of them. The intention was to file a corrected pleading sometime today. I don't know if that's happened yet. I just wanted to confirm that by fixing this clerical error, we wouldn't be violating the stay --

HONORABLE MAGISTRATE JUDGE DEIN: See, I don't want you to do anything in a rush. I want you to get it right the first time.

MR. KISSNER: I understand. Understandable. I just don't want to violate the stay.

HONORABLE MAGISTRATE JUDGE DEIN: What are you saying? You're going to withdraw something you filed last night?

MR. KISSNER: No. I believe it's already happened. There was literally a problem with the signature block. It should be fixed by now, but in case it hasn't hit ECF yet, I just didn't want to be accused of violating the stay in doing that. That's all.

HONORABLE MAGISTRATE JUDGE DEIN: Okay.

MR. KISSNER: Thank you.

MR. DESPINS: Just a clarification, Your Honor. So we would have until September 1st to serve as well? Is that what you intended or --

HONORABLE MAGISTRATE JUDGE DEIN: Yes, as of now, but it's within your discretion. So you can serve before then.

MR. STANCIL: I'm sorry, Your Honor. I was confused. I thought Your Honor was suggesting he should serve now -- I'm just saying this from a case management perspective. The sooner people are served, the sooner we can coordinate on how to get everybody --

HONORABLE MAGISTRATE JUDGE DEIN: Correct, but he has until August 2nd to serve, regardless.

MR. STANCIL: Correct. He has a list of all the lien avoidance defendants in his pocket.

HONORABLE MAGISTRATE JUDGE DEIN: So I don't know if I'm shortening his time. So the lien avoidance, I'm hearing from counsel that he expects to serve sooner rather than later.

MR. STANCIL: I haven't heard that. Is that correct?

MR. DESPINS: It's really the clawback that we would --

HONORABLE MAGISTRATE JUDGE DEIN: And the clawback does not need to be served prior to September 1st. The other

litigation, though, is stayed pending a case management order. And I will actually issue an order on what I want in the case management order when I have some time to think about it.

MR. CALLEN: One point of clarification, Your Honor. You said that --

HONORABLE MAGISTRATE JUDGE DEIN: I didn't say that much.

MR. CALLEN: No, I know you didn't. I know you didn't. And I think that this covers it. When you said that the stay to September 1st wouldn't apply with respect to service, I just wanted to confirm that that wouldn't apply with respect to service of our third party --

HONORABLE MAGISTRATE JUDGE DEIN: Correct.

MR. CALLEN: Thank you.

HONORABLE MAGISTRATE JUDGE DEIN: But you need to make it clear, if you're serving anything, that the litigation itself is stayed.

MR. CALLEN: Understood, Your Honor. We will. We will.

HONORABLE MAGISTRATE JUDGE DEIN: Wait. Let's talk about that. If you're going to serve that, do we need to enter an order that says that the litigation is stayed and no response is due -- I need to see what you're going to serve.

MR. CALLEN: Maybe the way to resolve it would be this. If you would enter an order requiring, when we serve

our Summons with the Complaint, that we also serve a copy of your order that you're planning to enter that stays this litigation until September 1st, we can serve that all in a single package.

HONORABLE MAGISTRATE JUDGE DEIN: All right. So you need to do that.

MR. CALLEN: Yes. We can absolutely do that, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: Okay. All right. Any more trouble I can get into in my two minutes up here?

All right. Thank you.

THE COURT: The next Agenda item is the status conference with respect to the PREPA 9019 motion proceedings that are scheduled for July. And I have some opening remarks to which I will expect counsel to react.

To begin with, I want to note that my instruction to the government parties was to confer with potential objectors and submit a joint status report concerning issues that they wanted to address at this pretrial conference. The Joint Status Report that I received reads more, even in its amended incarnations, like a collection of legal briefs or position papers, and it does not appear to me to demonstrate a meaningful attempt to narrow issues or suggest a path forward.

The arguments in the status report, many of which were repeated in the briefing concerning the two motions in

limine, have lead me to conclude that there's a fundamental flaw in the structure of the disclosure process contemplated by the current schedule for the 9019 motion and in the opening documentation on the 9019 motion itself.

The 9019 motion was filed without any proffer of factual material, much less a proffer of facts sufficient to make out a prima facie case for approval of the relief sought in that motion. And although the 9019 motion filing includes legal discussion, that discussion is largely conclusory, and it lacks the thorough analysis of the legal issues that would be required to underpin an order approving a 9019 motion that would compromise claims that are allegedly significant in value.

So putting aside, for the moment, whether the motion should have been filed in that more fulsome manner, the current litigation schedule does not require that any declarations be filed until July 17. Frankly, I didn't realize that the government parties hadn't filed any declarations in support of their motion when I signed the Order setting the schedule. And I didn't notice the gap until I reviewed the 9019 motion in preparation for this hearing to see what anchors and guideposts there might be for resolution of the breadth and scope issues that are cued up in the Joint Status Report.

And so it seems to me that the lack of an opening

road map to the manner in which the government parties intend to justify, if you will, the 9019 relief that's being sought has lead to the current quite inefficient process in which we have parties arguing over discovery concerning topics that may or may not seriously be raised by the way the motion is advocated or which might be addressed, perhaps even adequately by factual proffers by the movants.

And we have here opponents and potential opponents of the RSA seeking very broad discovery in an attempt to put meat on the bones of the 9019 motion. And as I read it, they've essentially sought discovery on the full range of approaches that might underlie the conclusory statements contained in the 9019 motion and the Proposed Order.

Therefore, I have concluded, subject to hearing responses to this proposal from the parties present today, that I will direct the government parties to file their opening factual declarations and a supplemental memorandum of law keyed to those declarations by the middle of next week. Those papers must provide detailed factual proffers and legal arguments that, if uncontroverted, would be sufficient to demonstrate the movant's entitlement to the relief sought in the 9019 motion.

Those papers, thus, will chart a potential pathway for approval of the 9019 motion and put the Court in a better position to assess the proper scope of the hearing and, if

any, necessary additional discovery in advance of the hearing. For the avoidance of doubt, the additional submissions must include discussion of precisely what relief the Court is being asked to approve, the legal authority for such relief, and facts, as opposed to conclusory assertions, that would justify granting that relief.

And now I'm going to say that same thing about three other ways, just to get the point across and share with you my thinking. So I expect that the submissions will not simply repeat the conclusory statements in the 9019 motion. And I advise the government parties that the submissions shouldn't take an aggressively narrow view of what is relevant to the 9019 motion, which contemplates approval of arrangements that at this point appear to go beyond just setting a compromised value of the secured claims asserted by supporting bondholders.

Even if the Court were to adopt the narrow view advanced by the government parties in their papers so far, the Court will still need a record sufficient to establish the benchmark range of reasonableness for potential recovery on the bondholders' claims in order to determine whether the discount to the claims that would be the result of the settlement in the RSA falls within the range of reasonableness.

And in the filings to date, the government parties

have relied principally on the fact that the RSA is a deal struck by parties that were previously clearly at odds with one another. And that may well be one indicator of reasonableness, but I think that the scope and complexity of the deal demands significantly more to demonstrate that the compromise reached by the parties is fair and equitable.

For instance, the government parties have not sought to shed any light on their worst case/best case risk analyses. They haven't explained how they considered the larger macro economic effects of the deal, or otherwise demonstrated tangibly that they've given reasoned consideration of relevant factors that would merit the Court's deference to their business judgment.

Presumably there are analytical constructs underlying the compromise represented by the RSA, but the 9019 motion does not provide much detail or insight as to how or why this particular compromise was achieved. So I'm not concluding that no such showing meriting approval of the RSA is possible. Far from it. I'm simply pointing out that no such showing has been made at this point.

Additionally, the 9019 motion clearly contemplates approval of a deal that is far more complex and has ramifications for many more interested parties than a deal that simply sets a claim amount. And the Court must be persuaded that those aspects of the deal, such as imposing

charges, establishing priorities, making irretrievable pre-plan payments and exempting matters from regulation under local laws are within the Court's legal authority and supported by relevant facts and analysis.

And while the 9019 motion argues that certain aspects of the deal could be implemented by PREPA without Court approval, the 9019 motion as filed asks for Court approval of the RSA in its entirety, and therefore, seems to require the Court to determine whether that transaction as a whole, in all of its aspects, meets the standard for approval of agreements under Rule 9019.

Each aspect of the Proposed Order that the Court is being asked to approve must be adequately supported in fact and law. And you will remember that we did something of a back end exercise with this on the COFINA related motions, and I had hoped not to end up in that position again. That's why I'm trying to be as clear as I can today.

The government parties also have not provided much detail as to the overall process required to implement the RSA. It's not clear to me, at least from the face of the motion, what further legislative and regulatory steps will be required to implement the RSA. And frankly, that informational gap makes it difficult for me to determine, for instance, whether there is another proper forum for the broader set of interested parties to have policy concerns

about things to speak to.

If people can go and lobby the legislature about whether necessary legislation imposing charges or whatever should be approved, yes, maybe that is a consideration that I should account for in determining the scope of the proof here. Also, it isn't clear to me which aspects of the deal the Court's being asked to approve conceptually that will require other changes to Commonwealth law versus what the Court is being asked to declare valid, binding and effective on the basis of an order issued by this Court.

This includes the description of modified charges and rate structures with no clear explanation of what legal authority there is for these changes. And so if the Court's being asked to approve and thereby validate these changes as a legal matter, the movants will have to provide legal authority for the Court's ability to do that.

Certain opponents of the RSA have contended that aspects of the proposed deal would prematurely decide aspects of a potential PREPA plan of adjustment and materially and irrevocably affect the rights of non-settling creditors. If the government parties disagree that the RSA would have that effect, they should lay out legally and factually their position as to how the RSA will preserve the rights of non-settling interested parties and have no constraining effect on the ability of non-participants to litigate issues

that are normally material to confirmation that the government parties contend are irrelevant to this 9019 motion practice.

To the extent the RSA would constrain such future opportunities, movants should provide factual support and legal authority justifying the Court's approval of the 9019 motion, notwithstanding concerns about the preemption of the plan confirmation process.

To the extent that the Court's approval of the RSA would provide parties with rights to pre-plan distributions, the government parties should explain the legal and factual basis for making such distributions, and the government parties should also lay out the legal and factual basis for the administrative claims and exculpatory provisions that are included in the RSA.

I am proposing June 19 at noon, so that's a week from today at noon, as the deadline for the government parties to file the supplemental memorandum of law and supporting declarations that I have described. Thereafter, all of the parties, opponents and proponents, must promptly meet and confer to determine what aspects of the currently pending discovery and evidentiary motions can be resolved without Court intervention, and file, by the following Monday, a status report concerning what discovery and pretrial issues remain, the necessity for any further hearings on such issues, and a proposed schedule for any further discovery.

As to the meet and confer process, the Court requires more than an 11th hour distribution of a template into which parties can plug disparate arguments. There must be genuine, timely interaction and an effort to reach realistic and efficient compromises of any disputed issues, as the time remaining for completion of discovery of a reasonable and appropriate scope will have been shortened somewhat.

The 9019 motion must still be fully briefed by July 17 to give the Court an opportunity to consider properly and appropriately the parties' various positions.

And so now, Counsel, I will hear your responses to these remarks. Mr. Bienenstock.

MR. BIENENSTOCK: Your Honor, Mr. Despins requested ten minutes for us to talk first. Would that be okay with the Court or would you like me just to --

THE COURT: That's fine. A ten-minute break has been requested, and so everybody be back in your seats at 3:25 by the clock in the courtroom, which is about 13 minutes from now. Thank you.

(At 3:11 PM, recess taken.)

(At 3:33 PM, proceedings reconvened.)

THE COURT: Please be seated.

Mr. Bienenstock.

MR. BIENENSTOCK: Thank you, Your Honor. And thank you for the recess. Martin Bienenstock of Proskauer Rose,

LLP, for the Oversight Board, as representative of PREPA.

Your Honor, we had discussions both with Mr. Despins, with Wachtell, for the fuel line lenders, and came to a number of conclusions, part of which are requests that I'd like to advise the Court of. And I'd then very briefly like to go over some of the Court's comments about the RSA, because we think all of the paper might have given the Court -- when I say we, I'm just speaking for the Oversight Board and the government.

We also -- the government was part of the discussion outside. All of the paper might have given the Court the wrong impression as to what the Court's being asked to do in the motion. And I think it would be good for us to explain our view to Your Honor, because that may have something to do with how we go forward.

In terms of the schedule, what the government, the Oversight Board, and the objecting parties, and I'm speaking to the Committee and the fuel line lenders, would like to do, is to use between now and this coming Monday to file a new joint status report with Your Honor attempting to narrow the issues and set a schedule, but also because we think that some of the issues probably won't be consensually resolved, to see if Your Honor could give us a follow-up hearing in New York sometime next week to deal with the issues that will be identified in the new joint status report.

We don't think, for several reasons, we can file the declarations and brief, et cetera, a week from today simply because each of our clients, and especially the government, simply require a lot of time before they sign off on declarations and things of that sort. And it will take more time. That we will propose in the status report that we would file Monday, if it's okay with the Court.

We're -- because our clients aren't here, we don't have authority today to agree on new schedules, but I think it's clear from what I've said, that a new schedule may arise out of what we file Monday, because we know that the Court needs -- needed to have everything briefed, et cetera, by the dates the Court previously ordered. And if that turns out to have to be delayed, other things may have to be delayed, but we're not in a position now, we don't have authority now to agree on changing dates.

In terms of the -- what we're asking the Court to approve -- I want to go through the RSA very briefly, because our view of what is at issue here is different from what we think the Court thought it was. And we take full responsibility for the fact that the Court could have come to its conclusion because we're asking Your Honor to approve the whole RSA.

It seemed like a good idea at the time, and it may stay a good idea, but I want to explain what's inside it,

because we don't think it's everything Your Honor thought it was.

To the extent the RSA provides for payments to various creditors, to the extent it provides for the accrual of a claim, to the extent it provides for rates to be changed, if that were all it did, we wouldn't be in court in the first place, because since Congress didn't make Section 363 of the Bankruptcy Code applicable to Title III cases, we can use property without prior Court approval.

And in fact, all along, as Your Honor knows in this case, the creditors would have been thrilled had we just raised rates earlier, and thought we should have, and there was -- no one on any side ever thought that Title III required -- would require Court approval for that. And it wouldn't. What a debtor charges for its services is what a debtor charges, and it doesn't need Court approval for that.

To the extent Your Honor read the RSA -- so, well, let me go back to -- that's what we don't need Court of approval for. The reason we were asking for Court approval, and both sides, was this. Early in this case, as Your Honor saw, the Ad Hoc Creditors and others filed a motion for stay relief so they could request the appointment of a receiver. And they asserted in their pleadings, and they attached all the documents, that they are oversecured; that not only the net revenues, they said all revenues, but the covenant to

raise rates, the receivership remedy was all a package of collateral; and when you put it all together, they were oversecured.

The deal we've struck with them is that although they were saying they're oversecured, a hundred percent plus interest, they're getting approximately 67 percent of their principal claim -- or 67 percent of their claim, and then if that's paid, another note for ten percent, which is less certain. So it's 67, plus maybe a little more.

THE COURT: And some time value of money provisions in the form of administrative claims --

MR. BIENENSTOCK: Yes. Yes. Yes.

THE COURT: -- and payments.

MR. BIENENSTOCK: Yes.

Now, from the debtors' point of view, the government parties' point of view, that is a great deal we should grab, because what they're saying is they're willing to commit that no matter what their claim is, the ultimate plan that's confirmed only has to give them treatment giving them the 67 percent, plus maybe a little more.

So to limit their claim so that that's all they're entitled to, that's why we wanted -- that's why, from the government parties' point of view, we wanted Court approval, to reduce their allowed claim to that. I think it was reducing them to like the 67 to 77, 74 cents, whatever it

turns out to be.

THE COURT: Now, as I think it was probably the Committee pointed out, and as I recall from last summer, the debtor was -- or two years ago, whenever the receivership motion was made, the Oversight Board and the government were arguing or PREPA were arguing that the -- if there is collateral at all, it's net revenues; there won't be any net revenues; the rate raising covenant is not collateral in the sense of the Code; therefore, the claim to be settled is worth zero; and if you thought about it in this context, you'd say, well, it's zero augmented by the always present chance of an aberrant result, and so that would be the bottom end of a range. Whereas the way you've articulated the rationale for the deal here assumes that there's a very, very strong case for all revenues are oversecured, and getting that discounted by 25 to 35 percent is a great deal.

Let's wait for the phone.

Testing. Would our monitor please send a message as to whether this can be heard?

Testing. Would our monitor please send us a message if you can hear this? All right. Apparently we're back up.

And so what I was saying just before we dropped was that there was another scenario last summer that might support different economics and different assessment of the value of the deal.

MR. BIENENSTOCK: Exactly, Judge. And I want to emphasize, that was in the context of the Motion for Stay Relief, and we were operating based on the jurisprudence, which we would still be operating on. That -- you look at that from the collateral value on the petition date or the date they're asking for stay relief, and whether it's going to decline from there, and we said the collateral value was zero.

That is a different inquiry, and the Bankruptcy Code makes clear that valuations for stay relief purposes are for stay relief purposes, are not necessarily valuations for confirmation purposes. So with confirmation, if we're now dealing with what is the value of their secured claim going forward, we could argue it's quite small, and we may end up doing that. And we have facts and law. But on the other side, they're going to say things that -- I can't speak for them obviously, but the arguments we would anticipate having to deal with are: What utility keeps rates unchanged forever? And why are you not raising rates? And if you do this great transformation, you may have a greater net revenue than you had before, because you're only doing it to improve things. And on and on and on.

So there's a contest there. And basically, you know, it's pretty clear, we came out believing that locking in the 67 plus was better than rolling the dice and having that contest.

Another issue, though, that I wanted to try to clarify goes back to what Your Honor is being asked to approve by approving even the whole RSA. All the RSA requires and allows us to do, us being the debtor, is to come to this Court subsequently with a plan, and a plan that proposes the treatment of the Ad Hoc Creditors and Assured in the manner set forth in the RSA.

The key point is the Court is not being asked to say at the RSA approval hearing that that treatment is legal or will be -- can be part of a confirmed plan. All we're committing to, the debtor is committing to the ad hocs, we will propose that treatment that all in all gets you your 67 plus return, but it's going to be up to the Court to confirm or not to confirm a plan that does that to your claim.

And as for the fuel line lenders, and the unsecured claimholders who are saying what's left, the reason we said that's really out of bounds for this hearing is if we don't give them enough to make the plan confirmable, Your Honor will deny confirmation.

So, I mean, we really took their issues as to what's left as sort of a negotiating thing that we're supposed to put something on the table. We will be doing that. We're speaking to them, but we don't know what it has to do with the RSA, because the Court's not saying that anything in the RSA will ultimately be confirmed or approved or legal.

Of course all we're doing is we're getting the Ad Hoc commitment that if we bring a plan that pays them their 67 plus, they will vote to accept that plan, and all the other confirmation issues are left for confirmation.

THE COURT: But your RSA requires, and this may just be the reality of the world, but it requires that you have them over a threshold and in numbers that will give you a consenting impaired class --

MR. BIENENSTOCK: We have that.

THE COURT: Yes. And so that does put the rest of the objecting world into, you know, a particular position of potentially being crammed down, and puts them in that standing. And that's the way the Code works.

MR. BIENENSTOCK: Let me put it a different way, Your Honor, because this may make the case. We don't need any Court order to bring that plan to the Court. And we don't need -- and as I said, the Court, when we bring it, can confirm it or not confirm it.

We don't need any Court order to make payments because of the 363 issue. We don't need a Court order to change the prices. We want the Court order because we don't want the Ad Hocs to say tomorrow, 67 is too low, now we want 77 or 87 or something like that. We don't want the deal to fall out of bed. But approving the R -- so from our point of view, approving the RSA locks them into accepting that

treatment.

Virtually everything else going on, other than the exculpation -- but that's not a normal exculpation where all officers and directors are exculpated for everything to do with the reorg. That's a tiny, narrow exculpation of the indenture trustee, who's being asked to sign a tolling agreement on the lien challenge so we can bring it later.

And indenture trustees never want liability for anything. But, I mean, the exculpation is as narrow as I think anyone can ever find. And what it covers, I think, in that situation is minor.

But that's the exculpation thing, and I -- well, I shouldn't go further on that, but that's how narrow it is. A confirmation I'm sure will put a larger exculpation in the plan, but again, the Court's not being asked to approve that now. And it will or won't when it comes up based on the facts and law then.

As far as the local laws, the -- well, we think the government, which is a party to all this, is going to get all that's necessary to happen, as far as rates and legislation. We think we could probably in a plan do it based on Section 305, which says this Court can interfere with governmental and political powers with either Oversight Board consent or in a plan. And the Court would have both. But we don't think we'll have to test that here, because the government wants

this as much as the Oversight Board wants it.

So we don't think this Court would be going out on a limb on any local law, certainly not in approving the RSA. If in the plan we ask the Court to declare that something in the plan preempts some law, okay, then that's an issue for confirmation. And the Court will again agree with us or not, grant it or not, but we're not asking for that now.

So that's why we're somewhat taken aback at how broad the Court thought this was, because we're just locking in the Ad Hocs not to ask for more.

THE COURT: Well, I got where I got today by, you know, looking at two lanes of a road and the information that I had in those two lanes of the road. You know, one was this joint status report with very disparate views. The other was, frankly, first looking -- reading your motion, looking for declarations and not finding them. And then going through your Proposed Order and seeing what sorts of findings of fact and conclusions of law you were asking me to make in the Proposed Order; and, you know, finding that a conclusion that the entire RSA is fair and reasonable or whatever is supported by an assertion in the motion that the entire RSA is fair and reasonable, and, you know, valid and binding and wonderful. So you might want to look at what rulings you're asking me to make.

When I asked you that same question at the COFINA

confirmation about certain provisions being valid and binding and wonderful, I'll say, because it's late in the day, the answer on certain legal propositions was, well, you are approving -- you can make this law essentially, because you are approving the compromise that we reached. And in the compromise, we're creating a structure that doesn't otherwise exist. And we are invoking your power to make that happen.

And you know, there were further detailed legal arguments as to why that should be, but those arguments only came after I specifically asked for them twice. So I'm asking you to be precise as to what you want me to do and how you think I should get there. And that would give me some grip to hold onto in evaluating arguments by a myriad of people from other perspectives that, well, if what they really want you to do is this, then they'll have to show that, and so on and so forth.

MR. BIENENSTOCK: Right. Well, I assume -- I've explained what the government parties want out of it. We want to lock in the reduced secured claim. I assume the creditors want out of it to have an order making us do what we promised to do, which is to propose the plan giving them that treatment and make the payments that we're already making, et cetera, and raise the price as we said we'd do. All of which -- as I explained earlier, if that were all, we wouldn't have to come to the Court. It's just to deal with the claim that we do.

THE COURT: And so for instance, on raising rates, when you say PREPA can do that on its own, you're not asking me to approve an extraordinary and novel means of rate setting that wouldn't otherwise involve some sort of consideration of public input and all sorts of things?

MR. BIENENSTOCK: I don't believe so. I may stand corrected by the government parties, but I think they had enough elbow room in the current rate structure to move things as they've done already during this case. They've lowered and raised back rates, and they had a bunch of room to do things like that.

THE COURT: It would be nice to know.

MR. BIENENSTOCK: Now, I assume that -- as I said, I'm sure the creditors want us locked in to do what we say we'll do under the RSA. And you know, if I were them, I would have said what they said, which is ask for the RSA to be approved. And I don't know if they'll move off that, but I think that the -- it's the impact of what approval of the RSA means that I wanted to explain to Your Honor.

There's only one thing in there that it really means we're reducing their claim. And yes, we're going to be ordered to do what we say we'll do, but we want to do that anyway.

In any event, I don't want to take up more of the Court's time. I wanted to explain what we thought we were

asking of the Court, and the problem we have with the schedule and ask if it's okay if we submit a revised joint status report on Monday.

Others may want to speak. I'm not sure.

THE COURT: Yes. Mr. Friedman has been up and down a couple of times. So let me hear from Mr. Friedman and then I'll respond to your question.

MR. BIENENSTOCK: Thanks.

MR. FRIEDMAN: Peter Friedman. We join with Mr. Bienenstock. We think that for certain aspects, these are within PREPA's powers. To the extent other approval is necessary, we think it's the kind of approval -- for example, I think there are some things that may require legislative approval. Some things which arguably we'll have to assess, whether they are present issues, but we don't think they are Court approvals.

I also want to say, I don't think it will be a surprise, we think that RSA issues, RSA approval, what's necessary to get from the Court, what can be given here is very different from other circumstances where the government is not actually a party.

So I don't want to be again in a position where somebody says, oh, you were silent when Mr. Bienenstock said this can be done without Court approval or this can be done under 305, and the Court can permit interference.

PREPA and AAFAF are both parties here. We think that makes it categorically different. I don't need to get in a debate about whether I'm right or wrong, but I just want to lay that marker down and provide the information necessary for you to at least think about where we come out in terms of who has to approve what.

So thank you, Your Honor.

THE COURT: Thank you.

Yes, sir.

MR. KLEINHAUS: Good afternoon, Your Honor. For the record, my name is Emil Kleinhaus from Wachtell, Lipton, Rosen & Katz. I haven't been here in a couple of years. I'm happy to be back.

THE COURT: Thank you. Good afternoon.

MR. KLEINHAUS: I represent Cortland Capital Market Services, LLC, as successor administrative agent under a 2012 credit agreement that was originally entered by PREPA and a group of Puerto Rico banks, with Scotia Bank of Puerto Rico as agent. We formerly represented Scotia. We now represent Cortland as an administrative agent on a facility of 550 million dollars in principal amount of fuel lines which are loans that were made to PREPA to finance fuel purchases.

There's a separate facility owned primarily by funds advised by Solus Capital Management of approximately 150 million, so in total, the fuel lines are approximately 700

million dollars of debt, and other than the bonds, are the principal financial creditors of PREPA.

The fuel line lenders were fully involved in pre-petition negotiations on an RSA, were a party to the pre-petition RSA. Unfortunately, despite trying on multiple occasions to engage with the Oversight Board and the Commonwealth post petition, we have not been able to get traction on a post-petition negotiation, and we are therefore, constrained to object to the RSA.

Just a couple of comments in response to Mr. Bienenstock. First of all, to Your Honor's comments at the beginning of the hearing, we agree with the approach that Your Honor has set out, because one of the things I was going to say is we were getting set up here for a situation where in light of how little the Oversight Board said in their opening brief, particularly on the issues pertaining to my clients and the 700 million they're owed, we were going to have a reply brief in which the entire case was made there. And then we were going to end up with lots of substantive submissions right before the hearing, which is precisely what the Court said at the beginning today you were hoping to avoid.

So I think an approach that requires a much more robust position from the parties at the outset, which frames the issues and allows the issues to be addressed in hopefully an organized way, is certainly preferable to what's happened.

So we agree, and Your Honor was directing it anyway, but I note our agreement with that.

To Mr. Bienenstock's comments about the scope of the hearing, I'm not going to repeat what was in our section of that Joint Pretrial Report, but I do want to point out that in addition to the objections that the Creditors' Committee will be raising to the settlement, and we expect to join in some or many of those objections, we have a very particular problem with this RSA. And the very particular problem is that our fuel line is intended to be and was senior to the bonds from a priority perspective under the pre-petition agreements, under pre-petition resolutions, under pre-petition offering memoranda to the bonds.

And we believe that this RSA, contrary to what the Oversight Board has submitted, does not leave the fuel lines unprejudiced and with their rights reserved for a plan, but rather, in certain ways that can't be reversed, essentially subverts that priority scheme by, number one, allowing payments, significant payments out in the opposite of the priority scheme, because what the priority scheme said, if PREPA raises rates, that has to be used first for current expenses, and everybody agreed that the fuel lines were a current expense. And only after current expenses are paid can the bonds get paid. This RSA suggests, dictates that the opposite is going to happen.

There's also a most favorite nations provision in this RSA which prevents the Oversight Board from entering into any agreement with our clients, the fuel line lenders, on terms that are better than the bond terms, which again locks in the Oversight Board not to respect our priority.

There was even a provision in this agreement that says that the Oversight Board can't enter into any kind of restructuring agreement with the fuel lines without the bondholders' approval, and there we believe the Oversight Board is essentially giving the bondholders a veto over future negotiations which we hope to have with them.

And Mr. Bienenstock said no approval is needed. There is a significant body of case law that we intend to invoke in our objection, starting from the Supreme Court, going down to the Circuit Courts, in cases like *Iridium* and *Aweco*, and a number of cases in this district which we cited in the Pretrial Report regarding situations in which, outside of a plan of reorganization, distributions can be made, priority rights can be not honored, and essentially the parties' rights that would otherwise be determined in the plan context are instead determined in the context of a settlement.

If the Oversight Board's position is going to be that despite all of the plan provisions in PROMESA, the government can simply disregard priority rules and essentially lock in, dictate the provisions of a plan through a pre-petition

settlement, that's a legal dispute that's going to have to be resolved by this Court, because we certainly do not agree with that. And I didn't want to let that comment pass without responding.

Lastly, Your Honor, to the point about the way forward, Mr. Bienenstock told me before he got up about a pre -- an additional report being submitted on Monday. We don't have any problem with that, but we do think if there's going to be an additional report, we should avoid the situation we had in the last report, which is round two of the parties just stating very disparate positions.

What I hope we can do is actually zero in on what the Oversight Board's position's going to be on this hearing. And on the priority issue in particular, we've been trying to get clarity on that, because if what the government parties are saying is they are not going to put priority at issue at this hearing, and moreover, they're going to assume the fuel lines' priority will be respected in the context of this hearing and argue that this can be reviewed anyway because, for example, there's no need for Court approval, that's one thing. That's a targeted, narrow hearing where the priority issue is reserved for another day. But we're entitled to argue that we have priority, and this settlement violates that.

But the Oversight Board's not contested that at the hearing. Instead, what they're arguing is this should be

approved regardless of priority. But in contrast, if the Oversight Board members want to make this hearing into a dispute that would otherwise be in a plan context or an adversary proceeding, and without objecting to our proof of claim which set forth the current expense position very clearly, without bringing an adversary proceeding, without a plan fully litigating rights that would otherwise be determined in a plan context, then we're going to have to be entitled to take appropriate discovery on that issue, and this becomes a much messier hearing.

And for due process reasons and otherwise, we're going to have to make a full case and we're going to be back in front of this Court and back in front of Judge Dein, as we were going to be on Friday, making our case as to what we need to have a fair hearing. So I'll stop there.

I also wanted to confirm, I understood Your Honor to be saying in light of the process that's going to go forward, we will not have the hearing with -- on the Motions to Compel on Friday. I'm open to discussing that. I just wasn't totally clear. That's a reasonable outcome given Your Honor's direction. I just wanted to make sure that was clear one way or the other.

THE COURT: Thank you.

And as to that last point, my intention, and jointly intended with Judge Dein, was to see where we come out with

respect to this recut of the schedule and to -- she was going to come back up here, and entertain a discussion as to whether there was anything useful to be done with a Friday hearing date and whether there is certain discovery that, everyone, you agree should go forward, whether that's controversial or not and whether the Friday hearing is necessary.

And so I think I will still leave that question to be answered after this discussion is completed.

MR. KLEINHAUS: Thank you.

THE COURT: Thank you.

Mr. Despins.

MR. DESPINS: Good news, Your Honor. I will not say very much. I know it's late in the day.

Unfortunately, I disagree with pretty much everything that Mr. Bienenstock said. That's all I need to say. I'll keep my powder dry on that.

In terms of the hearing on Friday, I don't think it makes any sense to go forward with that given what has transpired. And I don't think the government parties disagree with that, but they'll speak for themselves. Thank you.

THE COURT: Thank you.

Yes, ma'am.

MS. MENDEZ COLBERG: Good afternoon, Your Honor. Jessica Mendez Colberg on behalf of UTIER and Sistema de Retiro de los Empleados de la Autoridad de Energia Electrica,

the pension plan, or the PREPA.

Just briefly, Your Honor, we wanted to state that we are in the same position as the fuel line lenders in terms of the priority that the RSA prejudices in terms of UTIER and the members of the pension system due to the statement of the trust agreement of 1974 that states that the authority has to convey all the general funds that will be used first for the payment of the current expenses. And in the definition of current expenses, it is included, the payment of the Pension Plan.

So we stand at the same position of the fuel line lenders, and we agree that the information that the Court has requested from the government parties to supplement the motion, the 9019 motion, is necessary to address that issue.

THE COURT: Thank you.

Did anyone else wish to be heard? Yes, sir.

MR. CINTRON GARCIA: Good afternoon, Your Honor. Carlos A. Cintron Garcia representing Somos, Inc.

Your Honor, I wanted to be brief. The Oversight Board had issued a motion in limine seeking to exclude expert testimony by proposed interveners in this case. And regarding your initial statements regarding this motion in limine, I wanted to clarify your position on this motion.

We propose that our interventions are crucial to this process, as you well stated and we agreed that this process of

the 9019 motion must consider crucial matters as to the impact on consumers where -- because this issue is in very -- it's crucial to whether this settlement will be, realistically speaking, even feasible.

We -- if this settlement is predicated on consumers actually complying with whatever means of rate revision which might have to be taken, it would require that consumers actually play their part in these rate revisions. If consumers do not take a part in or comply with rate revisions, this settlement by all means is unfeasible. It's untenable.

Our proposed expert, Jose Almeida, is prepared to testify on how the set -- the RSA will affect consumers and how this RSA will be a great prejudice to consumers, to the point where the settlement is untenable.

THE COURT: Thank you.

For clarity, I did not say that the impact of -- that I've concluded that the impact on consumers is necessarily within the scope of 9019. I raised that as an example of an issue as to which the government might say, for instance, well, there's another forum where those concerns can be raised. It's not this one, for a variety of reasons. But at this point, again, I didn't have enough information from the government parties as to what they are trying to accomplish before this Court, as opposed to, in other ways, to be able to assess that or to assess their business judgment on issues on

which they're asking me to defer to their business judgment.

The short answer on the motions in limine is that I am going to hold those under advisement pending the further submissions, but the people against whom the motions in limine have been filed should not work on the assumption that I expect to permit them to intervene at the level of presenting testimony or examining witnesses.

As everyone knows, and as the First Circuit has said, the Court has discretion in shaping intervention to the extent intervention is allowed. And so I think it would be wise for the parties who seek to intervene, to whom objection has been made, to think about perhaps some briefing of common issues.

There were some overlaps in the submissions that I've seen. And it may be that to the extent I allow intervention, it may be the submission of a brief, perhaps some brief participation and oral argument at the 9019 hearing. But in order to make that sort of final determination, I need to have a much better picture of what the scope of the hearing will be. And I need these additional submissions in order to be able to do that.

MR. CINTRON GARCIA: Understood. Thank you, Your Honor.

THE COURT: Thank you.

Someone has come from the back. Yes.

MR. BEREZIN: Good afternoon, Your Honor. Robert

Berezin of Weil, Gotshal and Manges on behalf of National Public Finance Guarantee Corp. Your Honor, I'll be very brief.

National is PREPA's single largest creditor. We've been working with the government parties, as well as the Board, to see if we can join this deal and resolve our objections. At present, we find ourselves shut out of the RSA, not by the Board or by AAFAF, but by a certain creditor group due to rights they were able to negotiate in our absence during the negotiations.

So at this time, we must reserve our rights as an objector, and while we are going to continue our work, we wanted the Court to be aware that National, as a secured creditor and as a bondholder, certainly has objections that are unique from the others. And again, we hope to resolve them, but we wanted to reserve our rights for the record and just make sure you understood where we stand at this juncture.

THE COURT: Thank you.

MR. BEREZIN: Thank you.

MR. AGRAIT BETANCOURT: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. AGRAIT BETANCOURT: Fernando Agrait. I represent both Windmar Renewable Energy and ICSE, and several not for profit entities, all related to the general economic situation in Puerto Rico; and in particular, the impact of PREPA's

reorganization and the RSA and their operations.

I am highly satisfied with your statement on the need for additional information which will make possible for this Court and for those of us who are requesting participation to know where we are going and where do the government parties want to go. What worries me at this point is, even under your statement by Wednesday we have a new report, or by the government parties' statement that they want us to submit a sort of rehash joint report for Monday, we don't have a sort of route that we're going to follow.

I mean, it's already late on Wednesday. It's -- you said that you wanted real interaction and not just circulating a form to be filled by each party. So I would very much like from you, the Judge, a specific instruction to different parties on how we are going to reach what you expect us to do for next week. Because in my case, I was notified for the first time by the government parties Friday at 3:30, which was half an hour before the time for filing the joint report.

On Windmar's side, which is even a participant in the negotiations going outside the courtroom, we were never notified to be part of the joint report. So I don't think we should go out today and just expect all of the lawyers and all the parties to start calling each other and sending e-mails to establish the road map.

THE COURT: Thank you.

And so, Mr. Bienenstock, first, I just want to be clear that even if it's on a different schedule, I need front end elucidation and substantiation of the factual and legal case. And these objectors, I expect, will need that to finally come to grips with their positions on scope and discovery and that sort of thing.

I will grant your request to do true conferring and provide me a true joint issue identification and proposed scheduling report on Monday, but as the last speaker observed quite passionately, we need some agreement on the process that will be undertaken between here and Monday, so that I don't just get another collection of how people disagree, because I know they disagree already. That doesn't really help me.

So what do you propose to do in that regard, Mr. Bienenstock?

MR. BIENENSTOCK: We'll obviously speak with the parties, the objecting parties. I don't know if we're going to be able to convince anyone that their proposed scope of the hearing is wrong without Court rulings.

For instance, I mean, as Mr. Kleinhaus knows, he doesn't have a document giving him seniority. And even if he did, we'll either have a plan that treats him so that the Court confirms it or not. So we just don't see what he -- why he should find out what's left or whatever. That's negotiation, which we want to have with him.

THE COURT: So what's the point of whatever it is you want to give me Monday, besides perhaps trying to change a timetable?

MR. BIENENSTOCK: Well, partly it's changing the timetable to be able to give Your Honor the declarations and brief Your Honor asked for. Partly, Your Honor, we might make some progress with some of the parties on narrowing the issue. I just didn't want to represent to Your Honor that we're going to give you a fully agreed like pretrial schedule on scope and everything, because I don't know that the parties will see eye to eye.

Today -- I mean, today we were surprised that Your Honor thought that we were asking you to approve so much more than we thought we were asking you to approve. And as I said before, I get it, because we asked you to approve the whole RSA, but hopefully now it's clear how little there is in the RSA that really requires Court approval.

THE COURT: That will be clearer to me when I see that in writing and a skinnied up proposed order. I heard what you said, and I understood many of the words. I still don't frankly have a firm concept of what you believe you need me to do to keep your supporting parties on board and how that's different from what you appear to have asked me to do in your -- the Proposed Order I currently have before me.

If I'm being asked to make the same determinations,

whether it's to make people happy or because the law would require it, in any event, I'm still being asked to make certain determinations, and I don't have a pathway that explains to me the legal basis for doing it.

So as to -- you had mentioned I think when you first made this proposal that you intended to share more of the government parties' thinking about what's really being sought, and you've done that here orally. Did you have in mind to do that to a greater degree with the objecting parties in order to make some different scope proposal or substantiate your scope proposal, together with the timing proposal, to then distribute and take comments back or what did you want to do?

MR. BIENENSTOCK: Well, I think clearly, based on Your Honor's remarks today, the government parties would be wise to skinny down the Proposed Order and/or add to it in respect to the things we're not asking the Court to do. So spelling out the meaning of approving the RSA to a very -- so it's very limited. And that might convince some of the objecting parties that the hearing should be more narrow. But, you know, frankly, there's always the possibility that they just saw this as an opportunity to hold it up until they have their deals. And we would love to have deals with them, but I don't know if that will happen before the RSA comes on for approval.

So I don't know if it will make the objecting parties

happy when we -- or change their positions when we -- if we narrow down the Proposed Order, but we're certainly going to give it a try.

THE COURT: Well, and of course the immediate issue here is the scope of the hearing, and obviously if you had everybody on board with a deal, it would be a different kind of hearing. But assuming that there will still be contention, I still have to deal with what we're going to have in terms of pre-hearing discovery, what we would have in terms of witness testimony, how long that would take, who gets to speak. And that still needs to be informed by your submissions. And it may be that your opponents' positions as to what discovery they're going to continue to press for and whether they are going to continue to contend that they want to put on X, Y and Z witnesses may or may not change.

So I don't want to waste any time here, so let me propose this. By midday Friday, the government parties should distribute to every objector and target of a motion in limine whatever you're willing to provide in terms of a firmer road map of what you would expect to substantiate in terms of what is being asked for and the rationale for getting there in your subsequent submission of declarations and supplemental memorandum of law, plus your proposed timetable for the actual filing of the declarations and supplemental memorandum of law, and whatever other shifts in the timetable you propose to

make.

And I suppose you can include in that distribution two requests: One, for parties to have the opportunity to respond back as to whether this information changes their view as to the contested discovery issues that have been identified; and second, whether that view has been changed or not by this distribution, whether there are particular objections to the timetable changes that you are proposing.

And then I suppose you react to that, and maybe you have one more round of e-mailing with deadlines so that everybody has had an opportunity to speak their piece by call it noon Monday. And by close of business Monday, you file this joint statement. And that's a very rough concept of how you could do it, but that's a way it could be done.

Mr. Friedman's coming up.

MR. FRIEDMAN: Your Honor, it's Peter Friedman.

I think what you're proposing is going to result in a multiple iterative process. I think we'll be able to provide together some of that by Friday. I think the bulk of what we'll be able to accomplish in this next submission will be scheduling oriented, and then it's possible that we will wind up after we actually submit whatever we submit in response to your detailed requests.

Then being able to have a further and probably more meaningful pretrial discussion, because --

THE COURT: And that's why I had proposed filing the further information, and then have the pretrial discussion. It's -- you all have asked me for this interim step.

MR. FRIEDMAN: So I think we'll see where we can get, and we will commit to together providing the information we can provide. But it may be that this is an interim step and there has to be a second round of it.

But to the extent we can start the process and wind up, at a minimum, with a better engagement than last time together, that would be useful. It may be that people say, look, in the interim 48 hours, really all we can comment on is timing. That may happen. And it may be the effort to try to do something as an interim step doesn't get us nearly as far as we'd like, and that it does have to wait until after we do the detailed submissions you suggested.

So I guess we'll do our best and we'll see. Maybe us having thought that we could do something in the next 48 hours on that is overly ambitious, but it's worth a try.

THE COURT: Okay. So make sure everybody you know who's concerned is in the loop.

MR. FRIEDMAN: Okay.

THE COURT: And that that happens as soon as possible so that people aren't being presented with a *fait accompli* at the 11th hour.

MR. FRIEDMAN: I agree. I guess what I'd ask is

counsel, if we file the motion -- if people know where to find me -- we'll obviously do outreach, too, but if you want to be on this distribution, please e-mail me so that we don't have any slips.

I think people know where to find me. Just send me an e-mail and we'll match it up to a master list. But I just want to make sure that we don't inadvertently forget anybody. And I will take on the responsibility of making sure that that happens, but I would ask that people e-mail me.

THE COURT: Thank you, Mr. Friedman.

MR. WHITMORE: Your Honor, Clark Whitmore from the lawfirm of Maslon LLP, as the Indenture Trustee.

I think Mr. Friedman just anticipated my request. The U.S. Bank, as trustee, has been directed to join in the motion and will -- exculpation is one of the subject matters. And so we're interested and would very much appreciate being included in the distribution and discussions that are going on.

THE COURT: Very good. So e-mail your e-mail address to Mr. Friedman.

MR. WHITMORE: Yes. Absolutely. Thank you.

THE COURT: Thank you.

Mr. Bienenstock.

MR. BIENENSTOCK: Your Honor, we wonder if the Court would change the close of business Monday to Tuesday noon?

This is just hard to do that quickly, and we're all going to be traveling either tonight or tomorrow morning, so it doesn't leave really much time before Friday and Monday --

THE COURT: All right. You're the one that said Monday. Tuesday noon.

MR. BIENENSTOCK: Okay. Thank you, Your Honor.

THE COURT: Okay. Thank you.

So does anybody need Judge Dein to come up here to talk about whether there should be a hearing Friday or can we simply assume there won't be a hearing Friday?

Okay. Raise your hand if you want to have a hearing Friday. Okay. Seeing none --

HONORABLE MAGISTRATE JUDGE DEIN: (Raised hand.)

THE COURT: Okay. Judge Dein, glutton for punishment --

HONORABLE MAGISTRATE JUDGE DEIN: Oh, well, I --

THE COURT: All right. Then --

HONORABLE MAGISTRATE JUDGE DEIN: Can I just --

THE COURT: Yes. Come up here, please.

COURTROOM DEPUTY: All rise.

HONORABLE MAGISTRATE JUDGE DEIN: I'm certainly not going to add a hearing, and I think it makes a lot of sense to wait until the scope of the RSA hearing is defined, but some of the discovery issues it seemed to me should be done on submission. There are some legal issues that were raised. I

just ask the parties to think about that afterwards when you get into the discussion as to the scope of discovery, whether or not, excuse me, some of it should just be done on submission on some legal rulings. Okay? But I'm canceling my Friday afternoon hearing.

THE COURT: Please be seated.

All right. So I believe that this concludes today's Agenda. Seeing no one protesting that, this conclude today's Agenda.

So the next scheduled hearing date is Wednesday, June 26th, in Boston, with a video connection with San Juan. I think that's about the GO Procedures Motion.

HONORABLE MAGISTRATE JUDGE DEIN: Right. We'll talk about --

THE COURT: Yes.

And so as of now, that's what's on the calendar. And there's also a June 28th date that's just been put on the calendar.

HONORABLE MAGISTRATE JUDGE DEIN: In New York.

THE COURT: In New York. So there may be some switching around. Keep flexible that week, folks.

Mr. Despins.

MR. DESPINS: It might be helpful, Your Honor, if one of your law clerks could e-mail the Board or us with a list of blackout dates where you're not available in August. We're

not saying we're changing dates yet, because they don't have authority, but I think it helps people figure out if we know those dates are out.

THE COURT: Most of them. August is not a good month. I am always on the radar. I think I am the one person in this room who has been literally on the radar for the past two years and a month, and will be indefinitely because of this lovely statute that we're all operating under. But for staffing and other reasons, August would be a difficult month to conduct substantive court proceedings.

So Mr. Bienenstock, did you want to say something before I make my usual closing speech?

MR. BIENENSTOCK: No. No, Your Honor.

THE COURT: Okay. So again, as usual, I thank the court staff here in Puerto Rico, in Boston and New York. And today especially, Lisa Ng, who has operated as deputy here; Sarah De Jesus, who has been doing it in New York; the IT and AV staffs of the District of Puerto Rico and the Southern District of New York in contending with our various communications issues today; and our ace court reporter, Amy Walker, who keeps up with all of us, and for that, I'm very grateful.

And I'm grateful to the entire PROMESA team for their work in preparing for and conducting today's hearing and their superb ongoing support of the management and administration of

these very complex cases.

And so with that, keep well, thanks and safe travels to all.

(At 4:36 PM, proceedings concluded.)

* * *

U.S. DISTRICT COURT)

DISTRICT OF PUERTO RICO)

I certify that this transcript consisting of 196 pages is a true and accurate transcription to the best of my ability of the proceedings in this case before the Honorable United States District Court Judge Laura Taylor Swain and the Honorable United States District Court Magistrate Judge Judith Gail Dein on June 12, 2019.

S/ Amy Walker

Amy Walker, CSR 3799

Official Court Reporter